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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 373.

THE DANVILLE WATER COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DANVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED AUGUST 3, 1900.

(17,858.)

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from circuit court of Vermilion county	2	1
Caption	2	1
Præcipe for summons	2	2
Summons and return	3	2
Declaration	4	3
Plea to declaration	5	4
Order granting leave to file amended declaration	5	4
Amended declaration	6	4
Ordinance passed and approved November 9, 1882	6	5
Ordinance passed May 1, 1883, approved June 2, 1883	16	12
Ordinance passed and approved June 7, 1883	26	18
Ordinance passed and approved August 7, 1884	27	19
Ordinance passed and approved April 1, 1886	29	20
Ordinance passed and approved June 19, 1890	30	21
Ordinance passed and approved August 20, 1890	32	22
Ordinance passed and approved September 25, 1890	33	23
Ordinance passed September 3, 1891, approved September 17, 1891	34	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 6, 1900.

	Original.	Print.
Ordinance passed November 5, 1891, approved November 11, 1891	36	25
Ordinance passed and approved October 20, 1892	37	26
Ordinance passed June 21, 1894, approved June 28, 1894	38	27
Ordinance passed July 26, 1894, approved August 1, 1894	42	29
Ordinance passed August 9, 1894, approved August 10, 1894	44	30
Ordinance passed and approved October 18, 1894	45	31
Rule to plead	48	34
Pleas to amended declaration	49	34
Ordinance No. 517, passed January 17, 1895, approved January 19, 1895	50	35
Ordinance No. 517, passed January 17, 1895, approved January 19, 1895	55	38
Demurrer to pleas	61	42
Order filing demurrers	61	42
Order adjourning court	61	42
Order sustaining demurrer, &c	62	43
Judgment	62	43
Bill of exceptions	63	43
Motion in arrest of judgment	63	44
Judge's certificate to bill of exceptions	64	44
Order adjourning court	64	45
Remanding order of supreme court of Illinois	65	45
Notice of filing remanding order	66	46
Additional pleas of defendant	67	47
Demurrer to additional pleas	69	48
Judgment	69	48
Appeal bond	70	49
Order adjourning court	71	49
Clerk's certificate	71	50
Assignment of errors by appellant	72	50
Assignment of errors by appellee	75	52
Transcript from circuit court of Vermilion county	77	52
Caption	77	52
Præcipe for summons	77	53
Summons	78	53
Sheriff's return	79	54
Declaration	80	55
Bill of particulars	83	56
Demurrer to declaration	83	57
Amended declaration	84	57
Ordinance passed and approved November 9, 1882	85	58
Ordinance passed May 1, 1883, approved June 2, 1883	96	65
Ordinance passed and approved June 7, 1883	106	71
Ordinance passed and approved August 7, 1884	108	72
Ordinance passed and approved April 1, 1886	109	73
Ordinance passed and approved June 19, 1890	111	74
Ordinance passed and approved August 20, 1890	113	75
Ordinance passed and approved September 25, 1890	114	76
Ordinance passed September 3, 1891, approved September 17, 1891	115	77
Ordinance passed Nov. 5, 1891, approved Nov. 11, 1891	117	78
Ordinance passed and approved October 20, 1892	118	79

	Original.	Print
Ordinance passed June 21, 1894, approved June 28, 1894	120	80
Ordinance passed July 26, 1894, approved August 1, 1894	124	83
Ordinance passed August 9, 1894, approved August 10, 1894	125	84
Ordinance passed and approved October 18, 1894	127	84
Pleas to amended declaration	131	87
Ordinance No. 517, passed January 17, 1895, approved January 19, 1895	132	88
Ordinance No. 517, passed January 17, 1895, approved January 19, 1895	138	92
Demurrer to pleas	146	96
Order granting leave to file new declaration, &c.	147	96
Order adjourning court	147	96
Judgment	147	97
Order adjourning court	148	97
Sheriff's return of notice of reinstatement	148	97
Notice of reinstatement	149	98
Remanding order of supreme court of Illinois	150	99
Judgment	152	99
Appeal bond	153	100
Order adjourning court	154	101
Clerk's certificate	154	101
Assignment of errors by appellant	155	101
Assignment of errors by appellee	158	103
Order taking motion to consolidate under advisement	159	103
Order consolidating causes	159	104
Order taking cause under advisement	159	104
Opinion	160	104
Judgment	161	105
Bond on writ of error	162	105
Assignment of errors	165	107
Citation and service	170	110
Clerk's certificate	171	110
Writ of error	172	111
Return on writ of error	174	111

1 UNITED STATES OF AMERICA:

Supreme Court, State of Illinois, February Term, A. D. 1900.

Proceedings had before the honorable the supreme court of the State of Illinois, begun and held at Springfield, to wit, on the first Tuesday in the month (being the sixth day) of February, A. D. 1900.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff; A. D. Cadwallader, clerk.

Be it remembered that heretofore, to wit, on the 6th day of February, A. D. 1900, there was filed in the office of the clerk of said supreme court a certain transcript of a record, which is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Vermilion County, }

In Circuit Court, October Term, A. D. 1895.

Pleas before the Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois and presiding judge of the circuit court of Vermilion county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Danville, in said county, on the seventh day (being the first Monday) of October, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Present: Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois; Seymore G. Wilson, State's attorney; Martin J. Barger, clerk; William C. Thompson, sheriff.
Attest: MARTIN J. BARGER, *Clerk.*

First day of October term, 1895, Monday, October 7th, 1895, court convened by due proclamation, according to law, at 9 o'clock a. m. On the fifth day of September, 1895, there was filed in the office of the clerk of said court *pracipie* for summons in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In the Circuit Court, October Term, A. D. 1895.

DANVILLE WATER COMPANY }
vs.
THE CITY OF DANVILLE. }

Trespass on the case on promises; damages, $5,000.00.

The clerk will please issue summons, returnable as above, and deliver to the sheriff of said county to execute and oblige.

W. R. LAWRENCE,
REMY & MANN,
Att'ys for Plaintiff.

3 Filed Sept. 5th, 1895.
M. J. BARGER, *Clerk.*

On the 6th day of September, 1895, there was filed in the office of the clerk of said court a summons, with the return of sheriff endorsed thereon, in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summons the City of Danville, if it shall be found in your county, personally to be and appear before the circuit court of Vermilion county, on the first day of the term thereof, to be holden at the court-house, in Danville, in said Vermilion county, on the seventh day of October next, to answer unto the Danville Water Company in a plea of trespass on the case on promises, to the damage of said plaintiff, as *he* says, in the sum of five thousand dollars; and have you then and there this writ, with and endorsement thereon in what manner you have executed the same.

Witness M. J. Barger, clerk of our said court, and the seal thereof, at Danville, this 5th day of September, A. D. 1895.

M. J. BARGER, *Clerk,*
By W. T. CUNNINGHAM, *Deputy.*

Vermilion county circuit court, October term, 1895. Danville Water Company *vs.* City of Danville. Circuit court summons. Filed Sept. 6th, 1896. M. J. Barger, clerk.

Served this writ on the within-named defendant by reading and delivering a copy to W. L. Runyan, mayor of the city of Danville, this 6th day of September, 1895.

4 W. C. THOMPSON, *Sheriff.*
JAMES SLOAN, *Dep'y Sheriff.*
LAWRENCE, REMY & MANN, *Attorneys.*

Fees.

Service	.65
Copy	.10
Two miles' travel	.10
Return	.10
	$00.95

On the 16th day of September, 1895, there was filed in the office of said clerk the declaration of plaintiff in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In the Circuit Court, October Term, A. D. 1895.

Danville Water Company, a corporation organized under the laws of the State of Illinois, plaintiff in this suit, by W. R. Lawrence and Remy & Mann, its attorneys, complains of The City of Danville, defendant, of a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit, on the first day of August, A. D. 1895, at, to wit, the county aforesaid, became and was indebted to the said plaintiff in a large sum of money, to wit, the sum of five thousand dollars (5,000.00 dollars), for money before that time had and received by defendant to and for the use of plaintiff.

And also in a like sum for money due and owing said plaintiff for work and labor done and performed by said plaintiff for said defendant at said defendant's special instance and request.

And also in a like sum for water pumped for and furnished to said defendant at said defendant's like special instance and request, and being so liable said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised said plaintiff to pay the same when thereunto afterwards requested.

Yet the said defendant, though often requested, has not as yet paid the same or any part thereof to plaintiff, but so to do has refused and still does refuse, to the damage of plaintiff five thousand dollars, and therefore it brings suit, *ect.*

W. R. LAWRENCE.
REMY & MANN.

5 Filed Sept. 16, 1895.
M. J. BARGER, *Clerk.*

On the 7th day of October, 1895, there was filed in the office of said clerk the pleas of defendant in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In the Circuit Court of said County, to the October Term, A. D. 1895.

DANVILLE WATER COMPANY } Assumpsit.
vs.
CITY OF DANVILLE. }

Plea of the defendant to the plaintiff's declaration.

And the said defendant, by W. J. Calhoun and G. F. Rearick, its attorneys, comes and defends the wrong and injury when, *ect.*, at, *ect.*, and says that it did not undertake or promise in manner and form as the said plaintiff has above thereof complained in its said declaration against it, and of this it puts itself upon the country, *ect.*

G. F. REARICK, *City Att'y,*
Attorneys for Defendant.

And now comes the plaintiff and does the like, *ect.*

REMY & MANN,
W. P. LAWRENCE,
Attorneys for Plaintiff.

Filed Oct. 7th, 1895.
M. J. BARGER, *Clerk.*

On the 22nd day of October, 1895, the following proceedings were had and entered of record in the words and figures following, to wit:

October Term, 1895, 13th Day, October 22d, 1895.

DANVILLE WATER COMPANY } 11182. Assumpsit.
vs.
CITY OF DANVILLE. }

On motion of said plaintiff it has the leave of the court to file an amended declaration herein.

6 On the 22d day of October, 1895, there was filed in the office of said clerk the plaintiff's amended declaration in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In October Term, A. D. 1895, Vermilion County Circuit Court.

DANVILLE WATER COMPANY }
vs.
CITY OF DANVILLE. }

The said plaintiff, by Remy & Mann and W. R. Lawrence, its attorneys, by this its amended declaration, amended by leave of the

court first had and obtained, complains of the said defendants of a plea of trespass on the case on promises:

For that whereas the said plaintiff, on, to wit, the ninth day of November, A. D. 1882, was and ever since that time has been and now is a corporation duly organized under the general incorporation laws of the State of Illinois then in force, and as such incorporation having the power to make the several contracts and do and perform the several acts hereinafter mentioned, and the said defendant was and ever since has been and now is a municipal corporation created and formed under the laws of the State of Illinois, known as chapter twenty-four of Revised Statutes of said State, and the amendments thereto, and on the day and year aforesaid there was duly and lawfully passed by the city council of the said defendant an ordinance which was afterwards duly approved by the then mayor of said city and duly published according to law on the 11 day of November, A. D. 1882; which said ordinance is in the words and figures following, to wit:

An ordinance providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. The privilege is hereby granted to the Danville Water Company, a corporation duly organized and existing under the laws of the State of Illinois, and to its successors and assigns, for thirty years from the passage of this ordinance, to construct and maintain within and near the city of Danville, water works for supplying the said city and the inhabitants thereof and of the adjacent municipalities and territory with water for public and private uses, and to use the streets, alleys, sidewalks and public grounds, and the rivers, streams and bridges of the city of Danville, within its present and future corporate limits, for placing, taking up and repairing mains, hydrants and other structure and devices requisite for the service of water.

2. The source of water supply shall be the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of stone or brick, of ample size to accom-*o*date the machinery of the said water company, and there shall be two pumping engines of modern and approp-iate style and good efficiency, having an aggregate pumping capacity of four millions gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture, before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of su*t*iable size to furnish an abundant supply of water for present and future requirements. The

fire-hydrants rented by said city, as hereinafter stated, shall be of modern and approp-iate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose coupling now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city six simultaneous fire streams through a fifty-feet section of hose and a one-inch nozzle to a height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams.

8 3. The said water company shall commence in good faith the construction of said water works within sixty days from the passage and approval of this ordinance, and shall have in successful operation at least eight miles of water mains in said city in the month of September, in the year 1883, and shall have the said water works fully completed, with ten miles of water mains in said city, in the month of December, in the year 1883. The lines of water mains shall be so located and laid as to afford fire protection to the several wards, there being no less than one mile of mains in each ward.

4. All mains shall be located and laid as not to interfere unnecessarily with any pipes, mains, conduits and sewers existing at the time of such location and laying. There shall be no unreasonable or unnecessary obstruction of the streets, alleys, sidewalks or public grounds of the said city by said water company in constructing the said works or in placing, taking up or repairing any mains, hydrants or other structures or devices requisite for the service of water, and the said water company, after using the said streets, alleys, sidewalks and public grounds, shall restore them, within a reasonable time, as nearly as practicable to their former condition, and shall hold the city harmless from any and all damages arising from negligence or mismanagement of said water company or its employees in constructing, extending or operating said works. In all street excavations the said water company shall keep red danger lights burning at night along line of the same, at least one light to every one hundred and fifty feet, and shall erect and maintain sufficient barricades at the ends of said excavations and at all streets and alleys where they cross said excavations. If the said city shall change the surface of any street or alley in which said water company shall have laid a main, and if such change shall exceed one foot, and if the said water company shall relay its main on account of such change, then the said city shall reimburse to the said water company the actual cost thereof.

5. If at any time it shall appear that the said water company, by extending its mains, will derive a steady additional revenue of not less than one hundred dollars per annum for every three hun-

9 dred feet of such extension, either from responsible private consumers, secured by written agreement, or from the rental of public fire-hydrants upon the terms hereinafter stated, then the

city council may by ordinance require the said water company to make such extension without unnecessary delay. But at the expiration of thirty years from the passage and approval of this ordinance, all rights of said city of requiring extensions shall cease, unless the rights, privileges and contract hereby granted and made shall have been renewed.

6. The said water company shall not charge to consumers during the continuance of the franchises granted by this ordinance exceeding the following maximum annual rates. But it shall have the right, at its will at any time, to insert a meter into the service pipe of any consumer, and to supply him at meter rates:

Banks, with one basin	$10.00
Bakery, each oven	$10.00 to 30.00
Barber shop, first chair	6.00
Barber shop, each additional chair	3.00
Bath, with heating apparatus, private	5.00
Bath, without heating apparatus, private	4.00
Bath, in boarding-house or hotel, first tub	8.00
Bath, in boarding-house or hotel, each additional tub	4.00
Bath, public, not less than	12.00
Brewery, per barrel brewed	.05
Billiard saloon, each table	4.00
Boarding-house, per room (no license less than $10.00)	1.50
Book-bindery, not less than	10.00
Brick-work, per 1,000 laid	.10
Brick yard, each gang of hands	25.00
Butcher shop, steam extra	10.00
Candy manufacturers	$15.00 to 30.00
Cigar manufacturers (no license less than $10.00), per hand.	2.00
Confectioners	$10 to 30.00
Cow-, each	2.00
Distilleries, for each barrel distilled	.10
10 Dyeing and scouring	$10.00 to 30.00
Forge, first fire	5.00
Forge, each additional fire	2.00
Fountain, six months (running not more than six hours per day) according to the size of jet	$12.00 to 50.00
Hall and theatres	12.00 to 50.00
Horse, one, including washing carriage	4.00
Horse, each additional	2.00
Horse, for private stable, not less than	3.00
Hotel, per room	Special
Ice-cream saloon	$10.00 to 20.00
Laundry	24.00 to 100.00
Office or sleeping rooms	5.00 to 10.00
Oyster saloons	10.00 to 20.00
Printing office, six hands or less (engine extra)	12.00
Printing office, each additional hand	1.50
Photograph galleries	10.00 to 15.00
Plastering, per square yard	.00½

Residence, occupied by one family, for domestic use, one to three rooms	5.00
Residence, each additional room	1.00
Restaurant	12.00 to 20.00
Saloons	10.00 to 30.00
Sprinkling, private garden ¾ hose, ⅛ nozzle, first fifty yards, per square yard	.04
Sprinkling, all over fifty yards, per square yard	.02
Sprinkling carts, per month	Special
Sprinkling sidewalk to center of street, ¾ hose, ⅛-inch nozzle, 11½ hours per day (no license less than $5.00), per front foot	.10
Stable, livery, board, or sale, six horses or less, including carriage-washing	12.00
Stable, each additional stall	1.50
Steam boilers, rated per horse-power, from, one to 11 ten horse power (working ten hours per day)	4.00
Steam boilers, each additional up to twenty	3.00
Steam boilers, over twenty	Special
Stone-work, per perch	.07
Stores and shops	8.00 to 20.00
Tenement, (no license less than $6.00) per room	1.50
Tobacco manufacturers, (no license less than $5.00) per hand	1.50
Urinal basins	6.00 to 12.00.
Water-closets, private	5.00
Water-closets, public	10.00
Wash-basins, in dwellings	2.00
Wash-basins, in hotels	3.00

Meter Rates.

100 to 500 gallons per day, per 100 gallons	.05
500 to 1,500 per day, per 100 gallons	.04
1,500 to 3,000 per day, per 100 gallons	.03½
3,000 to 5,000 per day, per hundred gallons	.03
5,000 to 10,000 gallons per day, per 100 gallons	.02½
10,000 or more gallons per day, per 100 gallons	.02

The rates in this section prescribed shall be paid quarterly, except sprinkling rates, which shall be paid for the season.

7. At the expiration of five, ten and twenty years after the completion of said works, and at the expiration of said term of thirty years, and at the expiration of any renewed term thereof, said city shall have the right to purchase the said works with its privileges and property at a fair valuation, to be ascertained as follows: In the event said city and said water company shall fail to agree on the price three disinterested appraisers of good intelligence, not residents of the county of Vermilion, shall be chosen and sworn to determine the value thereof. One to be appointed by the said city, one by the said water company, and the third by the two so appointed. When said three persons shall have been so chosen, and before

they determine said value the said city and the said water company shall each at their option have the right to call
12 non-resident experts, not exceeding three in behalf of each party, to give testimony under oath before said three appraisers as to such value. The said three appraisers shall then proceed to determine such value, and in so doing they shall take into consideration the productive value of the said water works, rights, privileges and property. And in the event there being no existing fire-hydrant contract with said city at the date of such appraisement, the last existing contract shall be included in the estimated productive value, as though still in existence. When the three or their majority shall have made an award in writing, ten per centum shall be added to the amount thereof; provided, the appraisal be made at the expiration of five years, but no percentum shall be added to the ascertained value of said property after the first period of five years. And the said city shall then have the option of refusing to pay after such award shall have been made, or of paying in cash to said water company within three months from the date of such award, the amount thereof and the said additional ten per centum thereon. If the said city shall refuse to purchase as aforesaid, it shall pay the necessary expenses incurred in making of said award. The said city shall, in such purchase, assume and perform all unfinished contracts made by said water company for furnishing water, and shall assume and pay all debts and obligations of said company, not exceeding in amount the said purchase-money to be paid by said city. And all sums so paid shall be in part discharge of said purchase-money. But if said city shall determine to avail itself of this right to purchase, it shall, in all cases, give written notice to the said water company of such determination, at least one year before the expiration of said privilege, or before the other appointed dates of purchase.

8. In consideration of the benefits which will be derived by the said city and its inhabitants from the construction and operation of the said water works, and in further consideration of the water supply hereby secured for public uses, and as the inducement to said water company to accept the provisions of this ordinance and contract, and to enter upon the construction of said water works, the
13 rights and privileges hereby granted to and vested in said water company shall remain in force and effect for thirty years from the passage of this ordinance; and for the same consideration and as the same inducement, the city of Danville hereby rents of the Danville Water Company for the uses hereinafter stated, one hundred fire-hydrants of the character hereinafter described, and for and during the term of thirty years from passage of this ordinance, and agrees to locate them promptly along the line of the street mains, on demand of said water company, and on submission by it to said city of a plan of the location of said street mains, and agrees to use the said hydrants carefully and to pay said water company for any injury which may happen to any of them when used by any officer, servant or member of the fire department of said city, and agrees to pay rent for said one hundred hydrants at the rate of

seventy-five dollars each per year, and agrees to pay during the unexpired term of said ordinance and privilege, for any additional fire-hydrants which city may hereafter locate at the rate of sixty-two and fifty one-hundredths dollars each, per year, for the next forty additional hydrants, and for all fire-hydrants in excess of one hundred and forty at the rate of fifty dollars each, per year; all of which sum shall be paid by said city to said water company, beginning from the dates when each of such hydrants shall be put into successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and terminating upon the expiration of said term of thirty years, or upon the purchase of said works and their privileges and property by the said city.

9. The fire-hydrants rented by the said city of the said water company shall be used only for the extinguishment of fires, and shall constantly furnish effective fire streams without the aid of portable engines, and flushing gutters and sewers through a fire-nozzle. In flushing, no one hydrant shall be used exceeding ten minutes in one week, nor shall more than one hydrant opening be turned on at the same time, nor shall any flushing be done during the existence of a fire or without notice to the water company.

10. The said water company shall constantly keep all fire-
14 hydrants rented of it by said city supplied with water for fire service, and shall maintain them in effective working order. The chief of the fire department of said city, or in his absence, the officer in charge thereof, shall have charge and control of said fire-hydrants, and may at any time cause such hydrants to be inspected, and if on, such inspection any of said hydrants are to be found out of working order, he shall forthwith notify said water company in writing, specifying the hydrant or hydrants out of working order, and shall also report to the city council the date of such examination and the result thereof and his subsequent action in the premises. And in case any hydrant shall remain out of repair for one week or more after the said water company shall have been so notified in writing, the said city shall be entitled to deduct from said hydrant-rental account, the sum of ten dollars per week so long (as) such hydrant is not in working order: Provided, that the total amount so deducted shall not exceed double the yearly rental of such hydrant or hydrants. And in case that the said water company, after said water works have been completed and in successful operation, shall suffer a suspension of the supply for both domestic and fire purposes exceeding thirty days, then in that case said water company shall forfeit all privileges hereby granted, unless such suspension shall have been caused by circumstances beyond the control of the said water company.

11. The said water company or assigns, in consideration of said city renting such number of fire-hydrants, hereby agree to gratuitously furnish and erect a combined spray and drinking fountain for man and beast, flowing twelve hours *per diem*, (and not exceeding two thousand gallons *per diem*), on the public square in said city; and also to furnish free, water for said fountain, and in addi-

tion thereto water for two additional drinking fountains, flowage not to exceed one thousand gallons each *per diem*, fountains to run except during freezing weather, also water free for all city offices and quarters of fire department situated on lines of water mains in said city, (for drinking and washing purposes), for and during the term and continuance of this privilege and ordinance. Whenever the
15 city council shall decide to erect additional public drinking fountains for man and beast, such fountains shall be located on the lines of water mains at such point or points as the city council may designate, the annual rental of such additional fountains shall be one hundred dollars each per annum, payable quarterly as for fire-hydrants. All public drinking fountains shall be provided with automatic valves, or shall furnish a constant-flowing stream through a small orifice, at the option of said water company or assigns to prevent the waste of water.

12. The said water company shall provide and maintain at its own expense, a telephone or other electric line affording connection between its pump-house and each principal fire-department station, for use during fires, the city to furnish its own instrument.

13. The city shall adopt and enforce ordinances protecting the said water company in the safe and unmolested exercise of these franchises, and against fraud and imposition, and against injury to its property and waste of water by consumers, and the said water company may make and enforce as part of the condition upon which it will supply water to consumers, all needful rules and regulations not inconsistent with law.

14. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of the terms, obligations and conditions of this ordinance, and upon such acceptance this ordinance shall constitute the contract, and shall be the measure of the rights and liabilities of the said city and the said water company.

15. All ordinances and parts of ordinances inconsistent with the provisions of this ordinance, and especially the ordinance entitled: "An ordinance to provide for the construction and maint*ai*nance of water works for the supply of water to the city of Danville, Illinois, and its inhabitants, and for the prevention and extinguishment of fires in said city," passed and approved April 22, 1882, are
16 hereby repealed and this ordinance shall take effect from and after its passage and publication.

Passed and approved this 9th day of November, A. D. 1882.

L. T. DICKASON, *Mayor.*

Attest: A. C. FREEMAN,
[SEAL.] *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance; and afterwards, on the first

day of May, A. D. 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant, and was duly published according to law on the eight day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

An ordinance to amend and carry out an ordinance of the city council of the city of Danville entitled "Providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882.

Whereas, the Danville Water Company has commenced in good faith the construction of its water works within sixty days from the passage and approval of an ordinance of the city council of the city of Danville entitled "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882, which commencement in good faith of said construction is hereby acknowledged; and

Whereas, the Danville Water Company has submitted to the city of Danville a plan of the location and size of its street mains,
17 and the city of Danville has thereupon, on demand of said water company, located on the said street mains the one hundred hydrants rented by the said city of Danville of the said water company; and

Whereas, the Danville Water Company proposes, in addition to connecting its works for a water supply with the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street, to dig a well or wells north of Fairchild street, in the vicinity of its pumping station, and to utilize for water supply the water pumped by it from such well or wells so dug:

Now, for amendment of said ordinance in conformity with the foregoing, and for the purposes of carrying out the said ordinances:

Be it ordained by the city council of the city of Danville, in the manner following—that is to say:

1. That section two of an ordinance of the city of Danville, entitled, "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, 1882, which reads as follows:

"The source of the water supply shall be the North fork of the Vermilion river, at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of

stone or brick, of ample size to accommodate the machinery of the said water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as a part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of suitable size to fur-
18 nish an abundant supply of water for present and future requirements. The fire-hydrants rented by the said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jackets, and with double delivery, fitted to connect with hose couplings now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city six simultaneous fire streams through a fifty-feet section of hose and a one-inch nozzle to a height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of said city four simultaneous effective fire streams."

Be, and the same is, hereby amended to read as follows:

2. The Danville Water Company shall take its water supply from the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street, or from a well or wells dug by it north of Fairchild street, in the vicinity of its pumping station, or from North fork and such well or wells, changing from one to the other, or to both sources of supply, from time to time at its discretion. The pump-house shall be of stone or brick, of ample size to accommodate the machinery of the said the water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as a part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch; and the location and size of those permitted to be laid may be as follows, the said water company having the right to select the side of the street:

From the pumping station to the intersection of Lincoln and Denmark streets, 14 inches diameter.

In Woodbury street, from Franklin to Vermilion streets, 6 inches diameter.

19 In Griggs street, from Junction avenue, to Collett street, 6 inches diameter.

In Lincoln street, from Denmark to Harmon avenue, 14 inches diameter.

In Williams street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Williams street, from Section to Junction avenue, 6 inches diameter.

In Ann street, from Harmon avenue to Gilbert street, 4 inches diameter.

In Seminary street, from Grant street to Harmon avenue, 6 inches diameter.

In Madison street, from Mill street to Harmon avenue, 4 inches diameter.

In Madison street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Madison street, from Vermilion to Depot streets, 6 inches diameter.

In Harrison street, from Mill to Pine streets, 4 inches diameter.

In North street, from Robinson to Depot streets, 4 inches diameter.

In Main street, from Pine to Franklin streets, 8 inches diameter.

In Williams street, from Vermilion to Section streets, 8 inches diameter.

In Main street, from Franklin to Gray streets, 10 inches diameter.

In Main street, from Gray to Collett streets, 6 inches diameter.

In South street, from Vermillion to Buchanan streets, 6 inches diameter.

20 In Chestnut street, from College to Elizabeth streets, 4 inches diameter.

In Grant street, from Lincoln to Seminary streets, 6 inches diameter.

In Mill street, from Madison to Harrison streets, 6 inches diameter.

In Harmon avenue, from Lincoln to Williams street, 14 inches diameter.

In Harmon avenue, from Williams to Mansson streets, 10 inches diameter.

In Robinson street, from Harrison to North street, 4 inches diameter.

In Gilbert street, from Williams to Madison streets, 6 inches diameter.

In Pine street, from Madison to Main streets, 8 inches diameter.

In Oak street, from Seminary to Madison streets, 4 inches diameter.

In Franklin street, from Woodbury to Williams streets, 4 inches diameter.

In Franklin street, from Williams to Madison streets, 6 inches diameter.

In Franklin street, from Madison to Main streets, 4 inches diameter.

In Walnut street, from Williams to Main streets, 4 inches diameter.

In Vermilion street, from Woodbury to Williams street, 4 inches diameter.

In Vermilion street, from Williams to Madison streets, 8 inches diameter.

In Vermilion street, from Madison to Main streets, 10 inches diameter.

In Vermilion street, from Main to South streets, 6 inches diameter.

In Hazel street, from Williams to Madison streets, 4 inches diameter.

21 In Hazel street, from Madison to Main streets, 6 inches diameter.

In Hazel street, from Main to South streets, 4 inches diameter.

In Hazel street, from South to Green streets, 6 inches diameter.

In Jackson street, from Williams to Madison streets, 6 inches diameter.

In Jackson street, from Madison to North streets, 4 inches diameter.

In Depot street, from Madison to Main streets, 6 inches diameter.

In Gray street, from Main to South street, 4 inches diameter.

In College street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from Chestnut to Wayne streets, 4 inches diameter.

In Junction avenue, from Williams to Griggs streets, 6 inches diameter.

In Buchanan street, from Main to South streets, 4 inches diameter.

In Collett street, from Main to Griggs streets, 4 inches diameter.

The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with hose couplings now in use by the fire department of said city. Said fire-hydrants so rented by said city shall be set by the said water company on whatever corner of the intersection it may select, but in all cases on the side of the street nearest to the main with which they are to connect; and they are hereby located as follows:

1. At the intersection of Woodbury and Franklin streets.

22 2. At the intersection of Woodbury and Walnut streets.

3. At the intersection of Woodbury and Vermilion streets.

4. At the intersection of Clay and Franklin streets.

5. At the intersection of Tincher and Denmark streets.

6. In Franklin street, at the north side of the right of way of the I. B. & W. railway.

7. In Vermilion street, at the south side of the right of way of the I. B. & W. railway.

8. At the intersection of Lincoln and Denmark streets.

9. At the intersection of Lincoln and Sheridan streets.

10. At the intersection of Lincoln and Grant streets.

11. At the intersection of Lincoln and Chandler streets.

12. At the intersection of Williams street and Harmon avenue.

13. At the intersection of Williams and Robinson streets.

14. At the intersection of Williams and Gilbert streets.

15. At the intersection of Williams and Oak streets.
16. At the intersection of Williams and Franklin streets.
17. At the intersection of Williams and Walnut streets.
18. At the intersection of Williams and Vermilion streets.
19. At the intersection of Williams and Hazel streets.
20. At the intersection of Williams and Jackson streets.
21. At the intersection of Williams and Depot streets.
22. At the intersection of Williams and Section streets.
23. At the intersection of Wellington and Junction streets.
24. At the intersection of Wellington and Colcett streets.
25. At the intersection of Kimber and Grant streets.
26. In Harmon avenue, at the north side of the right of way of the I. B. & W. railway.
27. At the intersection of Cherry and Jackson streets.
28. In Franklin street, half way between Williams and Seminary streets.
29. In Vermilion street, half way between Williams and Seminary streets.

23

30. At the intersection of Ann and Gilbert streets.
31. At the intersection of Seminary and Grant streets.
32. At the intersection of Seminary street and Harmon avenue.
33. At the intersection of Seminary and Gilbert streets.
34. At the intersection of Seminary and Franklin streets.
35. At the intersection of Seminary and Vermilion streets.
36. At the intersection of Seminary and Jackson streets.
37. At the intersection of Seminary and Collett streets.
38. At the intersection of Madison street and Harmon avenue.
39. At the intersection of Madison and Robinson streets.
40. At the intersection of Madison and Gilbert streets.
41. At the intersection of Madison and Pine streets.
42. At the intersection of Madison and Franklin streets.
43. At the intersection of Madison and Walnut streets.
44. At the intersection of Madison and Vermilion streets.
45. At the intersection of Madison and Hazel streets.
46. At the intersection of Madison and Jackson streets.
47. At the intersection of Madison and Depot streets.
48. At the intersection of Herman and Collett streets.
49. At the intersection of Harrison and Franklin streets.
50. At the intersection of Harrison and Walnut streets.
51. At the intersection of Harrison and Vermilion streets.
52. At the intersection of Harrison and Hazel streets.
53. At the intersection of Harrison and Jackson streets.
54. At the intersection of Harrison and Depot streets.
55. In Vermilion street, at the corner of the alley between Harrison and North streets.
56. At the intersection of North and Robinson streets.
57. At the intersection of North and Pine streets.
58. At the intersection of North and Franklin streets.
59. At the intersection of North and Walnut streets.
60. At the intersection of North and Vermilion streets.
61. At the intersection of North and Hazel streets.

62. At the intersection of North and Jackson streets.
63. At the intersection of North and Depot streets.
64. At the intersection of North street (extended) and Collett street.
65. In Franklin street, at the corner of the alley between North and Franklin streets.
66. In Walnut street, at the corner of the alley between North and Main streets.
67. At the intersection of Van Buren alley and Vermilion street.
68. At the intersection of Van Buren alley and Hazel street.
69. At the intersection of Van Buren alley and Depot street.
70. At the intersection of Main and Pine streets.
71. In Main street, half way between Franklin and Pine streets.
72. At the intersection of Main and Franklin streets.
73. At the intersection of Main and Walnut streets.
74. In Main street, at the corner of the First national bank.
75. At the post-office corner.
76. At the intersection of Main and Hazel streets.
77. In Main street, at the corner of the alley between Hazel and Jackson streets.
78. At the intersection of Main and Jackson streets.
79. At the intersection of Main and Depot streets.
80. At the intersection of Main and Gray streets.
81. At the intersection of Main and McDonald streets.
82. At the intersection of Main and Park streets.
83. At the intersection of Main and Fremont streets.
84. At the intersection of Main and Clark streets.
85. At the intersection of Main and Buchanan streets.
86. At the intersection of Main and Collett streets.
87. At the intersection of South and Vermilion streets.
88. At the intersection of South and Hazel streets.
89. At the intersection of South and Jackson streets.
90. At the intersection of South and Gray streets.
91. At the intersection of South and Park streets.
92. At the intersection of South and Elizabeth streets.
93. At the intersection of South and Buchanan streets.
94. At the intersection of Green and Hazel streets.
95. At the intersection of Green and College streets.
96. At the intersection of Chestnut and College streets.
97. At the intersection of Chestnut and Park streets.
98. At the intersection of Chestnut and Elizabeth streets.
99. At the intersection of Pearl and Elizabeth streets.
100. At the intersection of Wayne and Elizabeth streets.

Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city, six simultaneous fire streams, through a fifty-feet section of hose and a one-inch nozzle, to the height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams: Provided, however, that

nothing in this section shall be so construed to operate against the full force and effect of section 9 and that part of section 2 of the original ordinance which provides for the laying of mains of suitable size to furnish an abundant supply of water for present and future requirements.

2. This ordinance shall become binding as a part of the contract existing between the city of Danville and the Danville Water Company in the event that said water company shall, within ten days from the passage and publication of this ordinance file with the city clerk of said city its written acceptance of it.

3. All ordinances and resolutions and parts of ordinances or resolutions in conflict herewith are hereby repealed, and this ordinance shall take effect at its passage and publication.

Passed by city council, May 1st, A. D. 1883. Approved June 2d, 1883.

L. T. DICKASON, *Mayor.*

Attest:

[SEAL.] A. C. FREEMAN, *City Clerk.*

26 And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 7th day of June, 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 8th day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for an extension of the pipe system of the Danville Water Company, contracting with it for an additional public fire-hydrant, and locating the public free fountain.

"Be it ordained by the city council of the city of Danville, in manner following, that is to say:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system by laying a six-inch water main from the intersection of Griggs street and Junction street northwardly seven hundred feet toward the car shops of the Chicago and Eastern Illinois Railroad Company; and that the city of Danville further requests and hereby requires the Danville Water Company to put up at the end of the said extension hereinbefore required to be made one additional fire-hydrant of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and the city of Danville hereby rents of the Danville Water Company the said additional fire-hydrant for the uses and subject to the conditions stated in the said ordinance of November 8th, 1882, for and during the term of thirty years from the passage of this ordinance, and agrees and binds itself to pay therefor to the Danville Water Company at the rate of sixty-two and fifty-hundre-ths dollars per annum, begin-ing

from the date when such hydrant shall be put in successful operation, in quarter-yearly installments on the first day of February, May, August and November of each year, and terminating
27 upon the expiration of the said term of thirty years, or upon the purchase of the said works and their privileges and property by the said city.

"SECTION 2. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall within ten days from the passage and publication of this ordinance file with the city clerk its written acceptance of it.

"SECTION 3. The Danville Water Company shall erect the free public fountain provided for by the eleventh section of the said ordinance of November 9th, 1882, in the center of the public square in said city of Danville.

"Passed and approved this 7th day of June, A. D. 1883.

"(Signed) L. T. DICKASON, *Mayor.*

"Attest: A. C. FREEMAN, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of last said named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the seventh day of August, A. D. 1884, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 15th day of August, A. D. 1884; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the pipe system of the Danville Water Company and renting of it two additional hydrants.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system along
28 North street to reach the places on said street hereinafter described, and that the city of Danville further requests and hereby requires the Danville Water Company to put two additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and in consideration of the compliance, by the Danville Water Company, with the foregoing requests and requirements the city of Danville hereby rents of the Danville Water Company, the said two additional hydrants located in the following-described places, to wit:

No. 102. At the intersection of North and Hayes streets.

103. At the intersection of Harrison and Mill streets.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the use*w* and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance,

at the rate of sixty-two dollars and fifty cents per hydrant per annum, beginning from the date when such hydrants shall respectively be put into successful operation, in quarter-yearly installments, on the first day of February, May, August and November of each year, and terminating upon the expiration of the said term of thirty years or upon the purchase of said works and their privileges and property by the said city.

2. This ordinance shall become binding as a contract, of the said city of Danville in event that the Danville Water Company shall, within ten days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed and approved August 7th, A. D. 1884.

L. T. DICKASON, *Mayor.*

And plaintiff avers that within ten days from the passage and publication of last said named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the first day of April, A. D. 1886, there
29 was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the ninth day of April, A. D. 1886; which said ordinance is in the words and figures following, to wit:

An ordinance providing for the extension of the pipe system of the Danville Water Company and renting of it four additional fire-hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following, that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system, by laying the following-described water mains: A four-inch main in Wayne street between the Wabash hospital and Buchanan street, a four-inch main in Oak street, between Seminary and Ann streets; a six-inch main in Buchanan street between Wayne and Commercial streets, a six-inch main in Collett street, between Griggs and the first alley north of the I. B. & W. railway tracks. And hereby requires the Danville Water Company to put up at the places hereinafter named, four additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved on November 9th, 1882; and in consideration of the compliance of the Danville Water Company with the foregoing requests and requirements, the city of Danville hereby rents of the Danville Water Company the four additional fire-hydrants, to wit:

No. 104. At the intersection of Oak and Ann streets.

No. 105. At the intersection of Buchanan and Commercial streets.

No. 106. At the intersection of Junction avenue and the I. B. & W. railway tracks.

No. 107. At the intersection of Collett street and first alley north of I. B. & W. railway track.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this
30 ordinance, at the rate of sixty-two dollars and fifty cents per hydrant per annum, beginning with the date when said hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first days of February, May, August and November of each year, subject to the termination by the purchase of the said works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville, in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed and approved this first day of April, A. D. 1886.

JOHN BEARD, *Mayor.*

Attest: A. C. FREEMAN, *City Clerk.*

And plaintiff av[illegible]t within ten days from the passage and publication of said last-[illegible]ned ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 19th day of June, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 24th day of June, A. D. 1890; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and renting of it five additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a four-inch main in Vermilion street from Woodbury to English street, and by laying a four-inch main in Franklin street from Woodbury to Townsend avenue, and that the city of Danville hereby requires the said water company to put up at the places hereinafter named five additional fire-hydrants of the kind
31 required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance by the Danville Water Company with the foregoing requests and requirements the city of Danville hereby rents from the Danville Water Company the said five additional fire-hydrants, to wit:

No. 108. At the intersection of Vermilion and Fairchild streets.

No. 109. At the intersection of Vermilion street and Townsend avenue.

No. 110. At the intersection of Vermilion street and English street.

No. 111. At the intersection of Franklin street and Fairchild street.

No. 112. At the intersection of Franklin street and Townsend avenue.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate of sixty-two dollars and fifty cents ($62.50) per hydrant per annum, beginning with the date when such hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first day of February, May, August and November of each year, subject to the termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved June 19, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

32 And afterwards, on the twentieth day of August, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 23d day of August, A. D. 1890; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a four-inch water main in Hazel street, from Davis street to Fairchild street, and that the city of Danville hereby requires the said water company to put up at the places hereby named three additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance of the Danville Water Company with the foregoing requests and requirements the city of Danville

hereby rents of the Danville Water Company the said three additional fire-hydrants, to wit:

No. 113. At crossing of Clay and Hazel streets.

No. 114. At crossing of Woodbury and Hazel streets.

No. 115. At crossing of Fairchild and Hazel streets.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate sixty-two dollars and fifty cents ($62.50) per hydrant per annum, beginning with date when said hydrants shall be respectively put up and connected with the water works of the said water company in quarter-yearly installments, on the first day of February,
33 May, August and November of each year, subject to termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved August 20th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And the plaintiff avers that within ten days from the passage and publication of last said named ordinance plaintiff filed with city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 25th day of September, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

An ordinance to amend section 1 of an ordinance entitled "An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants," passed and approved August 20th, 1890.

1. Be it ordained by the city council of the city of Danville, That section 1 of an ordinance entitled "An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants," passed and approved August 25th, 1890, be, and the same hereby is, amended so as to locate fire-hydrant No. 113 at the crossing of Hazel street and the first alley south of the Cleveland, Cincinnati, Chicago and St. Louis railroad, and the said Danville Water Company is hereby authorized and requested to so locate said fire-hy-ants at the above-named
34 point instead of at the crossing of Clay and Hazel streets, as prescribed in said original ordinance.

2. This ordinance to take effect immediately after its passage and approval.

Passed and approved September 25th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And afterwards, on the third day of September, A. D. 1891, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then said mayor of said defendant and was duly published according to law on the 18th day of September, A. D. 1891; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and the renting of it three additional fire-hydrants.

1. Be it ordained by the city council of the city of Danville That the city of Danville requests and hereby requires the Danville Water Company of Danville Illinois, to extend its water mains by laying a six-inch water main from a convenient and proper point to the inclosure of the shops of the Chicago and Eastern Illinois Railroad Company at the Danville junction in Danville, Illinois.

2. That the said city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified three additional fire-hydrants of the kind required by the ordinance of the said city of Danville relative to the water works of the Danville Water Company, passed and approved on the 9th day of November, 1882, that is to say:

No. 116. One hundred and seventy-two feet east of present main and southeast of hydrant No. 101.

No. 117. One hundred and seventy-two feet west of present main and southwest of hydrant 101.

No. 118. One hundred feet north and two hundred feet east of hydrant No. 101.

35 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents of and *and* agrees to pay to the said Danville Water Company for the said three additional hydrants during the unexpired term of thirty years from the 9th day of November 1882, at the rate of sixty-two dollars and fifty cents ($62.50) annually for each hydrant, payable in quarter-yearly installments, commencing when the said hydrants are respectively in place and ready for use, for the uses and subject to the terms and conditions of said ordinance passed and approved on the 9th day of November, 1882.

4. That the said quarter-yearly payments shall be made the first of February, the first of May, the first of August, and the first of November in each year, and subject to termination by the purchase of the water works aforesaid by the said city of Danville.

5. That this ordinance shall become binding as a contract upon

its passage and approval, and publication: Provided however, that the said Danville Water Company shall, within ten days from the publication hereof, file with the city clerk of the said city of Danville an acceptance in writing of all its terms, conditions and provisions.

Passed September 3d, 1891; approved September 17th, 1891.

JOHN BEARD, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And the plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 5th day of November, A. D. 1891, there was duly and lawfully passed by the said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published accor-ing to law on the 13th day of November, A. D. 1891; which said ordinance is in the words and figures following, to wit:

36 An ordinance providing for extending the pipe system of the Danville Water Company and renting of it another fire-hydrant.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system to reach the southwest corner of Madison and Mill streets, and to put up at such corner one additional fire-hydrant of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance by the said water company with the foregoing requests and requirements, the said city of Danville hereby rents the said hydrants for the uses and subject to the conditions stated in said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents ($62.50) per annum, beginning from the date when such hydrants shall be put into successful operation, in quarter-yearly installments, on the first day- of February, May, August and November of each year and terminating upon the expiration of the said term of thirty years from the 9th of November, 1882, or upon the purchase of the said works and their privileges and property by the said city.

2. This ordinance shall become binding as a contract on the city of Danville, in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed November 5th, 1891; approved November 11th, 1891.

JOHN BEARD, *Mayor.*

Attest:

JOSEPH SHATZ, *City Clerk.*

And the plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

37 And afterwards, on the 20th day of October, A. D. 1892, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of the said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it two additional fire-hydrants.

"Be it ordained by the city council of the city of Danville:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main in Logan avenue from Lincoln street to Kimber street.

"SECTION 2. That the said city of Danville hereby further requires the Danville Water Company to put at the places hereinafter specified two additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; said two additional fire-hydrants to be located as follows:

"No. 120. At the intersection of Logan avenue with the alley running into Logan avenue about midway between Lincoln and Kimber streets.

"No. 121. At the intersection of Logan avenue and Kimber street.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents the said two hydrants for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents (62.50) per annum for each hydrant, beginning from
38 the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

"Passed and approved this 20th day of October, A. D. 1892.

"JOHN BEARD, *Mayor.*

"Attest:

"JOSEPH SHATZ, *City Clerk.*"

And the plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 21st day of June, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants, and for all further hydrants to be hereafter rented than has heretofore existed.

"Be it ordained by the city council of the city of Danville, Ill.:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main as follows:

"On Collett street, from Lyford street to Wabash railroad, thence along Wabash railroad to Fairchild street, thence on Fair-
39 child street to Martin street.

"On East Madison street, from Collett street to a street as yet unnamed, which intersects East Madison about half way between Collett street and Stony creek.

"On Gilbert street, from Madison street to English street.

"On Hazel street, from Fairchild street to English street.

"On English street, from Jackson street to Vermilion street.

"On Vermilion street, from English street to Center street.

"On Sherman street, from Lincoln street to Tincher street.

"On Chandler street, from Lincoln street to Tincher street.

"On Kimber street, from Grant street to Sherman street.

"On the streets as yet unnamed (which intersect Williams street about half way between Washington avenue and Section street), from Williams street to Cherry street.

"On Buchanan street, from Commercial street to South street.

"On Buchanan street, from Wayne street to West street.

"On Jackson street, from Williams street to English street.

"On Walnut street, from Woodbury street to Penn. avenue if extended.

"On Wellington street, from Collett street to Kimball street.

"On Lahr street, from Jackson street to Washington street.

"On Walnut street, from Williams street to Davis street.

"On Commercial street, from Buchanan street to Illinois street.

"SECTION 2. That the city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified thirty-one additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved

November 9th, 1882, said thirty-one additional fire-hydrants to be located as follows:

"No. 122. At the intersection of Martin and Fairchild streets.

"No. 123. At the intersection of Kimball and Fairchild streets.

"No. 124. At the intersection of East Madison street and the street as yet unnamed, which intersects East Madison street about
40 half way between Collett street and Stony creek.

"No. 125. At the intersection of Gilbert and Clay streets.

"No. 126. At the intersection of Gilbert and Fairchild streets.

"No. 127. At the intersection of Gilbert street and Townsend avenue.

"No. 128. At the intersection of Gilbert and English streets.

"No. 129. At the intersection of Hazel street and the first alley south of Penn avenue.

"No. 130. At the intersection of Hazel and English streets.

"No. 131. At the intersection of Vermilion and Center streets.

"No. 132. At the intersection of Tincher and Sherman streets.

"No. 133. At the intersection of Chandler and Tincher streets.

"No. 134. At the intersection of Sherman and Kimber streets.

"No. 135. At the intersection of Cherry street with the street as yet unnamed, which intersects Williams street about half way between Washington avenue and Section street.

"No. 136. At the intersection of Buchanan and Green streets.

"No. 137. At the intersection of Buchanan and West streets.

"No. 138. At the intersection of East Main street and Bowman avenue.

"No. 139. At the intersection of East Main and Cottage streets.

"No. 140. On Walnut street, about half way between Williams and Madison streets.

"No. 141. On Hazel street, about half way between Williams and Madison streets.

"No. 142. At the intersection of Jackson and Woodbury streets.

"No. 143. At the intersection of Jackson and Davis streets.

41 "No. 144. At the intersection of Jackson and Sidell streets.

"No. 145. At the intersection of Jackson and English streets.

"No. 146. At the intersection of Walnut street and the first alley south of Townsend avenue.

"No. 147. At the intersection of Walnut street and Penn avenue (if extended).

"No. 148. At the intersection of Walnut and Davis streets.

"No. 149. At the intersection of Kimball and Wellington streets.

"No. 150. At the intersection of Main and Gilbert streets.

"No. 151. At the intersection of Lahr and Washington streets.

"No. 152. At the intersection of Commercial and Illinois streets.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents the said thirty-one hydrants for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees

and binds itself to pay therefor, at the rate of fifty dollars ($50) per annum for the first nineteen of the said thirty-one hydrants, and at the rate of forty dollars ($40) each per annum for the last twelve of said thirty-one hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. That the rental to be paid said water company by said city for all further fire-hydrants to be hereafter rented, in excess of the thirty-one herein specified, shall be forty dollars ($40) each per annum.

"SECTION 5. Nothing in this ordinance shall operate to effect
42 in any way any of the provisions of the ordinance heretofore passed by the said city relative to the Danville Water Company, except to the extent of the reduction in the rental of the thirty-one hydrants herein rented and all further hydrants to be hereafter rented as hereinbefore provided.

"SECTION 6. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance hereof.

"Passed June 21st, A. D. 1894.

"Approved June 28th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest:

"R. E. LLOYD, *City Clerk.*"

And the plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 26th day of July, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant, and was duly published according to law on the — of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants, and for all further hydrants to be hereafter rented, than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby
43 requires the Danville Water Company to make the following changes in the extension of the water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Jackson street from Sidell street to English street, and on English street from Jackson street to Hazel street, substitute an extension on Walnut street from Penn avenue (if extended) to Center street, and on Center street from Walnut street to Vermilion street.

"For the extension on Gilbert street from Madison street to English street, substitute extension on Gilbert street from Williams street to English street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to change the location of hydrant 145 from the intersection of Jackson and English streets as specified in the ordinance passed June 21st, 1894, to the intersection of Walnut street and Center street.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed July 26th, 1894.

"Approved August 1st, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the ninth day of August, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law
44 on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants and for all further hydrants to be hereafter rented than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to make the following change in the extension of water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Wellington street from Collett street to Kimball street, substitute an extension on Clarence street from Collett street to Kimball street.

"SECTION 2. That the said city of Danville hereby further re

quires the Danville Water Company to change the location of hydrant No. 149 from the intersection of Kimball and Wellington streets, as specified in the ordinance passed June 21st, 1894, to the intersection of Kimball and Clarence streets.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed August 9th, A. D. 1894.

"Approved August 10th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed
45 with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 18th day of October, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the —— day of ——, A. D. 18--; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it six additional fire-hydrants.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its mains by laying mains as follows:

"A 6" main on Robinson street from Williams street to Clay street.

"A 6" main on Douglas avenue from Buchanan street to Illinois street.

"A 6" main on South Vermilion street from South street to Green street (if extended).

"A 6" main on Walnut street from Davis street to Woodbury street, and

"A 4" main on Cottage street from E. Main street to Grove street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to put up at the places hereinafter specified six additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and six additional fire-hydrants to be located as follows:

"No. 153. At the intersection of Davis and Robinson streets;

"No. 154, at the intersection of Clay and Robinson streets;
46 "No. 155. At the intersection of South Vermilion and Green street (if extended);

"No. 156, at the intersection of Douglas avenue and Illinois street;

"No. 157, at the intersection of Walnut and Clay streets;

"No. 158. At the intersection of Cottage and Grove streets.

"SECTION 3. That in consideration of the compliance of the said water company with the foregoing requests and requirements, the said city of Danville hereby rents the said six hydrants, for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of forty dollars ($40) per annum for each of the said six hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance her-of.

"Passed and approved October 18th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And plaintiff avers that after — passage of said several ordinances hereinbefore alleged to have been passed respectively on the 9th day of November, 1882, the 1st day of May, 1883, and the 7th day of June, A. D. 1883, plaintiff duly built the said water works in
47 all respects as required by the provisions of said several ordinances and erected the said several hydrants and did all other things necessary and required of it to be done according to the terms and conditions of said several ordinances, and afterwards, to wit, on the 29th day of September, A. D. 1883, the test provided for in said ordinances was duly made, and said city council of said defendant, on said 29th day of September, A. D. 1883, by an order of resolution duly passed and entered of record, accepted said water works as being in full compliance with the terms and conditions of said ordinance.

And plaintiff further avers that from time to time and after the passage of each of said several ordinances so alleged to have been passed since June 7th, 1883, plaintiff has made said several extensions of its pipes as required by said ordinances respectively and erected and has ever since said erection maintained said hydrants as required by the terms and conditions of said ordinances respectively and has kept the same supplied with water as provided in said several ordinances, and said defendant has had the full, free, and unrestricted use of said hydrants and of said water for the uses

and purposes in said several ordinances mentioned, and on, to wit, the first day of May, A. D. 1895, there *was* erected and in use by said defendant within the corpor- limits thereof, to wit, one hundred (*100*) and fifty-eight (158) of said hydrants, of which number, to wit, one hundred (100) were erected under and by virtue of said ordinances passed November 9th, A. D. 1885, and May 1st, 1886; to wit, one was erected under and by virtue of said ordinance passed June 7th, 1883; to wit, two were erected under said ordinance passed August 7th, 1884; to wit, four were erected under and by virtue of said ordinance passed April 1st, 1886; to wit, five were erected under and by virtue of said ordinance passed June 19th, 1890; to wit, three were erected under and by virtue of said ordinance- passed August 20th, A. D. 1890, and September 25th, 1890; to wit, three were erected under and by virtue of said ordinance passed September 3rd, 1891; to wit, one was erected under and by virtue of said ordinance passed November 5th, 1891; to wit, two were erected under and by virtue of said ordinance passed October 22nd, A. D. 1892; to wit, thirty-one were erected under and by virtue of said several
48 ordinances passed respectively June 21st, A. D. 1894, July 26th, 1894, August 9th, 1894, and, to wit, six were erected under and by virtue of said ordinance passed October 18th, A. D. 1894.

And plaintiff further avers that from and including the first day of May, A. D. 1895, until and including the 31st day of July, A. D. 1895, each of said aforementioned hydrants *were* kept supplied with water by plaintiff in all respects as required by the terms and conditions of said several ordinances, and said defendant had during said time the full, free, and unrestricted use of said hydrants and of said water, as in and by the terms of said ordinance is provided, by means whereof said defendant become liable to pay said plaintiff, to wit, the sum of twenty-six hundred and twenty dollars and sixty-two cents ($2,620.62), on, to wit, the first day of August, A. D. 1895, and being so liable, afterwards, to wit, on the 10 day of August, A. D. 1895, at, to wit, the county aforesaid, undertook and promised to pay the same to the plaintiff when thereunto afterwards requested.

Yet the said defendant, though often requested, has not as yet paid the same or any part thereof, but so to do has refused and still does refuse, to the damage of plaintiff five thousand dollars ($5,000), and therefore it brings its suit, *ect.*

REMY & MANN AND
W. R. LAWRENCE,
Att'ys for Pl'ff.

Filed Oct. 22d, 1895.
M. J. BARGER, *C'lk.*

On the 26th day of October, 1895, the following proceedings were had and entered of record in said court in words and figures following, to wit:

SATURDAY, *Oct.* 26, 1895.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } 11182. Assumpsit.

On motion of said plaintiff, defendants is ruled by the court to plead herein by next Monday at noon.

49 On the 30th day of October, 1895, there *was* filed in the office of the clerk of said court defendant's pleas to said amended declaration in words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } *ss*:

In the Circuit Court of said County, to the October Term, A. D. 1895.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } Assumpsit.

Pleas of Defendant to the Amended Declaration of the Plaintiff.

And the said defendant, The City of Danville, by W. J. Calhoun and G. F. Rearick, its attorneys, comes and defends the wrong and injury when, *ect.*, at, *ect.*, and as to all of the said several supposed promises and undertakings in the said amended declaration mentioned, except as to the sum of nineteen hundred and thirty dollars ($1,930.00), parcel of the said several sums of money in the said amended declaration mentioned, says that it, the said plaintiff, ought not to have or maintain*ed* its aforesaid action thereof against this defendant except as to the sum of nineteen hundred and thirty dollars (1,930.00), parcel, *ect.*, as aforesaid, because it says—

That the said plaintiff at all the times mentioned in its said amended declaration was and now still is engaged in the public business of supplying said city and its inhabitants with water through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of authority granted in and by the said ordinance in said amended declaration mentioned.

That while the said plaintiff was so engaged in said business, viz., on, to wit, the 19th day of January, A. D. 1895, and after the passage and approval of each of the ordinances mentioned in the said amended declaration, the city council of the said city of Danville, as it lawfully might do, under and by virtue of an act of the General Assembly of the State of Illinois approved June 6th, 1891, and in force July 1st, A. D. 1891, entitled—

50 "An act to enable cities, towns, and villiages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or villiage and the inhabitants thereof," as well as under and by virtue of other full, competent, and complete legal authority, duly passed an ordi-

nance prescribing the maximum rates and charges for the supply of water to be furnished by the plaintiff to the defendant on and after the 1st day of May, A. D. 1895; which said ordinance is in the words and figures following, viz:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company to the city of Danville.

Whereas after a careful comparison of the rates and charges paid by this city for the supply of water to this city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company, (a corporation organized under the laws of the State of Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable,

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891, and in force July 1st, A. D. 1891, entitled: "An act to enable cities, towns and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town or village or the inhabitants thereof," as well as under and
51 by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois, (a municipal corporation organized under and by virtue of the general laws of the State of Illinois) is empowered to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by said corporation to this city,

And whereas after *the* full investigation of the matter it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable,

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by, in and through said hydrants, for which the said city is now paying said water company, the following rentals, viz: Seventy-five dollars ($75.00) per year, per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50), per year, per hydrant for the next twenty-one of said hydrants, fifty dollars ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company the

uniform rate and charge of fifty dollars ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished by said water company for public uses, by, in and through said twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished by, in and through said hydrants, said Danville Water Company shall
52 have and receive from said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz; the rate and charge of forty dollars (40) per hydrant, per annum and no more.

And for the use of water for flushing the public sanitary sewers of the city, such as are now built and connected with the pipes and water mains of said water company, and such as may be hereafter connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville, and said city of Danville shall pay said water company, at the rate of five cents (.05) per one thousand gallons, and no more.

And for the use of water by, in and through the public drinking fountain now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain per annum, and no more.

And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for the like service, which rate said city shall pay to said water company, therefor, and no more.

SECTION 2. That said city of Danville shall continue to take from said Danville Water Company all the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five (5) days after same is signed by the mayor, or shall go into effect without his signature.

SECTION 3. In case said water company shall desire to
53 make application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of this city to such suit or cause

as may be brought therefor, at the February term A. D. 1895 of said court.

Passed January 17th, 1895.

Approved January 19th, A. D. 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

Which said ordinance was duly deposited in the office of the city clerk of said city, and was afterwards, on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city, and duly recorded by the city clerk of said city, in all respects as required by law.

And afterwards, within five days after the approval of said ordinance as aforesaid, the said city clerk, on, to wit, the 23d day of January, A. D. 1895, delivered to the superintendant of said plaintiff a certified copy of said ordinance.

And the defendant further avers that the said plaintiff was duly notified of the passage and approval of said ordinance, and also of the fact that said city for the supply of water taken by the said city for public uses, viz., the supply for which the plaintiff now seeks to recover, and which was furnished in manner and form as alleged in said amended declaration, would pay no other or greater sums than those prescribed in the ordinance aforesaid, viz., the sum of fifty dollars per hydrant per annum for the first one hundred and forty (140) of said hydrants, and forty dollars per hydrant per annum for all other hydrants above that number; which said notice
54 was given long before the first day of May, A. D. 1895, and long before the said supply of water was furnished, viz., on, to wit, the 23rd day of January, A. D. 1895.

Wherefore the defendant alleges that the rates and charges to be made for the supply of water furnished by the said plaintiff to the said defendant, in the manner and form as set forth by said plaintiff in said amended declaration, are the sum of nineteen hundred and thirty dollars ($1,930.00) and no more, and this sum the said defendant is ready and willing to pay.

And this defendant is ready to verify; wherefore it prays judgement whether said plaintiff ought to have or maintain its aforesaid action thereof against the defendant, except as to the said *said* sum of $1,930.00, parcel, *ect.*

And for a further plea in this behalf, by leave of the court here first had and obtained, the defendant comes and defends the wrong and injury when, *ect.*, at, *ect.*, and as to all of the said several supposed promises and undertakings in said amended declaration mentioned, except as to the said sum of nineteen hundred and thirty dollars (1,930), parcel of the said several sums of money in said declaration mentioned, says that it, the said plaintiff, ought not to have or maintain its aforesaid action thereof against the said defendant, except as to the said sum of nineteen hundred and thirty dollars ($1,930.00), parcel, *ect.*, as aforesaid, because the defendant says:

That the said plaintiff at all the times mentioned in its said amended declaration was, and now still is, engaged in the public business of supplying the said city and its inhabitants with water for public and private uses through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of the authority given in the ordinances in said amended declaration mentioned.

That the said several sums of hydrant rental mentioned in said amended declaration for the first one hundred and twenty-one (121) hydrants of the hydrants in said declaration mentioned and
55 the rates and charges fixed in and by the said ordinances for the supply of water to be furnished to the said defendant by, in, and through the same, viz., the supply of water mentioned in said amended declaration as having been supplied in, by, and through the same, which said rates and charges as so fixed were the sum of seventy-five dollars per annum per hydrant for the first one hundred of said hydrants, and the sum of sixty-two and fifty-hundredths dollars per hydrant per annum for the next twenty-one of said hydrants, were at the time of the passage of said ordinances and now still are in excess of the reasonable compensation to be made for the supply of water furnished by the said plaintiff to the said defendant during the three months mentioned in said amended declaration, and for the matters and things for which the plaintiff has in the said amended declaration declared, and that the said rates and charges for said supply of water, viz., the supply of water furnished in the manner and form as alleged in the declaration aforesaid, were, and now are, unjust, unreasonable, and excessive.

And that the said ordinance- mentioned in said amended declaration, in so far as they attempted to fix the prices to be paid for the supply of water to be furnished during a long term of years, being voidable at the option of the city council of said city, and the said rates and charges aforesaid therein fixed being unjust, excessive, and unreasonable, the said city council of said city of Danville, after the passage and approval of each and all of the ordinances mentioned in said amended declaration, in view of all the foregoing facts, as it might lawfully do, on, to wit, the 17th day of January, A. D. 1895, passed an ordinance prescribing the maximum rates and charges for the supply of water furnished by the plaintiff to the said defendant for public uses beginning with the first day of May, A. D. 1895; which said ordinance is in words and figures following, viz:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company
56 to the city of Danville.

Whereas after a careful comparison with the rates and charges paid by this city for the supply of water to the city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company (a corporation organized under the laws of the State of

Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable.

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891, and in force July 1st, A. D. 1891, entitled: "An act to enable cities, towns and villages incorporated under the general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town, village or the inhabitants thereof," as well as under and by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois, (a municipal corporation organized under and by virtue of the general laws of the State of Illinois,) is empower to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by the said corporation to this city.

And whereas after a full investigation of the matter, it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable.

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by, in and through said hydrants, and for which said city is now paying
57 the said water company, the following rentals, viz: seventy-five dollars ($75.00) per year, per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50) per year, per hydrant for the next twenty-one of said hydrants, fifty dollar- ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city shall pay said water company the uniform rate of fifty dollar- ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished by the said water company for public uses, by, in and through said twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished by, and through said hydrants, said Danville Water Company shall have and receive from the said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz: the rate and charge of forty dollars ($40.00) per hydrant, per annum, and no more.

And for the use of water for flushing the public sanitary sewers

of said city, such as are now built and connected with the pipes and water mains of said water company, and such as may be hereafter built and so connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville and said city of Danville shall pay said water company, at the rate of five cents (5c.) per one thousand gallons, and no more.

And for the use of water by, in and through the public drinking fountain now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain, per annum, and no more.

58 And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for like service, which rate said city shall pay to said water company, therefor, and no more.

SECTION 2. That said city of Danville shall continue to take from said Danville Water Company all of the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify the said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five days (5) after the same is signed by the mayor, or shall go into effect without his signature.

SECTION # 3. In case said water company shall desire to make application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of this city to such suit or cause as may be brought therefor, at the February term, A. D. 1895, of said court.

Passed January 17th, A. D. 1895.

Approved January 19th, 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

59 Which said ordinance was duly deposited in the office of the city clerk of said city and was afterwards, within the time required by law, viz., on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city and by the city clerk duly recorded in all respects as required by law.

And afterwards, within five days after the approval of said ordinance, as aforesaid, the said city clerk, on, to wit, the 23rd day of January, A. D. 1895, delivered to the super-tendent of the said

Danville Water Company, in said city of Danville, a duly certified copy of said ordinance.

And the defendant further avers that the said plaintiff had due notice of the passage and approval of said ordinance and of the fact that the said city of Danville would pay no other or greater sum or sums for hydrant rental or for the supply of water to be furnished by said plaintiff to said city for public use, beginning with the first day of May, A. D. 1895, than the sums fixed in and by the said last-mentioned ordinance, viz.: the sum of fifty dollars for the first one hundred and forty (140) of said hydrants per hydrant per annum, for the remaining eighteen (18) of said hydrants.

And that the said supply of water furnished by the plaintiff in manner and form as alleged by plaintiff in its amended declaration was furnished by the said plaintiff with full knowledge of the passage and approval of said ordinance and after due notice of the contents thereof; which said notice was given by the defendant to the plaintiff on, to wit, the 23rd day of January, A. D. 1895.

And that the rates fixed in and by the said last-mentioned ordinance are just and reasonable and are a reasonable compensation for the supply of water furnished by the plaintiff to defendant in manner and form as alleged by the plaintiff in said amended declaration.

Wherefore the defendant alleges that the said plaintiff is entitled to have and receive from the defendant from the said supply of water so furnished, as aforesaid, no other or greater sum than the said sum of nineteen hundred and thirty dollars ($1,930.00), being the amount of rental for such fire-hydrants and the
60 water supplied through the same as fixed by said last-mentioned ordinance; and this the defendant is ready to verify. Wherefore it prays judgement whether the said plaintiff ought to have or maintain its aforesaid action thereof against this defendant except as to the said sum of nineteen hundred and thirty dollars, parcel, *etc.*

And for a further plea in this behalf, by leave of the court here first had and obtained, as to the sum of nineteen hundred and thirty dollars above mentioned, parcel of the said several sums of money in the said amended declaration mentioned, the said defendant says that on, to wit, the first day of August, A. D. 1895, on the day the same fell due and before the commencement of this suit, at, to wit, the county aforesaid, the defendant tendered the plaintiff, in full settlement of the matters set forth in the said amended declaration, a city order or warrant for the said sum of nineteen hundred and thirty dollars, drawn upon the treasurer of the said city, and that said city then and there had funds in the hands of said officers lawfully appropriated for that purpose and sufficient to pay the same in full, to receive which of the said defendant the plaintiff then and there and thence hitherto hath wholly refused; and the said defendant further says that it is ready and willing to deliver the said order to said plaintiff in payment of the said claim of the plaintiff sued upon in this case, and it brings the said order into court here to be delivered to the plaintiff, if said plaintiff will accept the same; and this the de-

fendant is ready to verify. Wherefore it prays judgement if the said plaintiff ought to have or maintain its aforesaid action thereof to recover any more or greater damages than the said sum of nineteen hundred and thirty dollars, parcel, *ect.*, in this behalf, *ect.*

W. J. CALHOUN,
Att'y for Def'd't.
G. F. REARICK, *City Att'y.*

Filed Oct. 30th, 1895.
M. J. BARGER, *Clk.*

61 On the 31st day of October, 1895, there was filed in the office of the clerk of said court the plaintiff's demurrer to said plea in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } *ss:*

In the Circuit Court, of the October Term, A. D. 1895.

DANVILLE WATER COMPANY }
vs.
THE CITY OF DANVILLE. }

And now comes said plaintiff, by Remy and Mann & W. R. Lawrence, its attorneys, and says that said several pleas by defendants above pleaded and each of them are insufficient in law. Wherefore plaintiff prays judgement, *ect.*

REMY & MANN,
W. R. LAWRENCE,
Att'ys for Plaintiff.

Filed October 31st, 1895.
M. J. BARGER, *Clerk.*

THURSDAY MORNING, *October* 31*st*, 1895.

DANVILLE WATER COMPANY }
vs. } 11182. Assumpsit.
CITY OF DANVILLE. }

Now comes said parties, by their respective attorneys, and said plaintiff files its demurrer to each of said defendant's pleas herein.

SATURDAY MORNING, *January* 4, 1896.

Court convened, pursuant to adjournment, at 9 o'clock a. m.
Ordered that court do now adjourn until court in due course of law.

January Term, 1896, 30th Day.

MARCH 7TH, 1896.

62 DANVILLE WATER COMPANY vs. CITY OF DANVILLE. } 11182. Assumpsit.

Now comes said parties, by their respective attorneys, and the court, having duly considered said plaintiff's demurrer to each of defendant's pleas, sustains said demurrer. Whereupon said defendant asks for said demurrer to be carried back to declaration herein and elects to stand by its said pleas.

SATURDAY MORNING, *March 14th*, 1896.

DANVILLE WATER COMPANY vs. CITY OF DANVILLE. } 11182. Assumpsit.

Now again comes said parties, by their respective attorneys, and said defendant, having failed to plead further as required by a rule of the court, comes not, but makes default, and the court, having heard evidence and being fully advised in the premises, finds that said plaintiff has sustained damages by reason of the non-performance of certain promises in its declaration mentioned. It is therefore ordered that said plaintiff have judgement against said defendant for said damages, now assessed by the court at the sum of ($2,701.00) twenty-seven hundred and one dollars. It is therefore considered and adjudged by the court that said plaintiff have and recover of and from said defendant, City of Danville, the sum of ($2,701.00) twenty-seven hundred and one dollars, and also its costs in this behalf expended. Thereupon said defendant moves the court in arrest of judgement, which motion is by the court overruled, and said defendant prays an appeal of this cause to the appellate court, which is granted upon the defendant filing its bill of exceptions herein in twenty days from this date.

On the 21st day of March, 1896, there was filed in the office of the clerk of said court the defendant's bill of exceptions in the words and figures following, to wit:

63 STATE OF ILLINOIS, *Vermilion County,* } *ss:*

In the Circuit Court of said County, January Term, A. D. 1896.

DANVILLE WATER COMPANY vs. CITY OF DANVILLE. } Assumpsit.

Bill of Exceptions.

Be it remembered that this cause came on for hearing upon the amended declaration, the three special pleas of the defendant, the said amended declaration, and the demurrer of the plaintiff to each

of said several pleas, before the Hon. F. Bookwalter, judge of the fourth judicial district of the State of Illinois, on the 7th day of March, A. D. 1895, it being one of the regular days of said term of said court, Remy & Mann and W. R. Lawrence appearing on behalf of the plaintiff, and W. J. Calhoun and G. F. Rearick, city attorney, appearing on behalf of the defendant.

And thereupon the defendant moved the court to carry the demurrer of the plaintiff to the defendant's special plea back to the plaintiff's amended declaration, and asked that such demurrer be sustained as to such amended declaration, and that judgement be entered up for the defendant, and that plaintiff be barred from further having or maintaining its aforesaid action.

And thereupon, having heard the arguments of counsel, the court overruled the motion aforesaid of the defendant and refused to carry back said demurrer as prayed, but sustained the same to the special pleas aforesaid, and the defendant then and there duly excepted to the overruling of said motion, and also then and there duly excepted to the judgment of the court in sustaining such demurrer to said special pleas.

And thereupon, the defendant having elected to stand by its motion aforesaid and its special pleas aforesaid, the court entered up a default against the defendant.

And thereupon came the defendant and moved the court in arrest of judgement and filed the points in writing, particularly specifying the grounds of such motion, viz:

1. The declaration is insufficient and defective for the rea-
64 son that it does not allege that before or at the time of incurring the alleged indebtedness in the ordinance in said declaration mentioned any provision was made for the collection of a direct annual tax sufficient to pay such indebtedness as it fell due, or that any such provision ever was made for the collection of any tax to pay said alleged indebtedness or any part thereof as it fell due.

2. And for the reason that it does not allege that any appropriation has been previously made concerning the expense incurred by the ordinance aforesaid, nor that any such appropriation was made before entering into the alleged contract.

And thereupon the court overruled the said motion in arrest of judgment; to which action of the court the defendant then and there duly excepted, and the court thereupon entered up judgment in favor of the plaintiff and against the defendant for sum of $2,701.00 and costs of suit; to which action of the court the defendant then and there duly excepted.

And forasmuch as the foregoing are matters and things which do not fully appear of record, the defendant presents this as its bill of exceptions, and prays that the same may be signed and sealed by the honorable judge of said court and made a part of the record in this case pursuant to the statute in such cases made and provided, which is done accordingly this — day of March, A. D. 1896.

F. BOOKWALTER, *Judge.* [SEAL.]

Filed March 21st, 1896.

W. J. BARGER, *Clerk.*

On the 11th day of April, 1896, the following proceedings were had in said court and entered of record therein, namely:

SATURDAY MORNING, *April 11th*, 1896.

Court convened, pursuant to adjournment, at 9 o'clock a. m.
It ordered that court now adjourn until court in due course of law.

65 On the 5th day of September, 1899, there was filed in the office of the clerk of said *clerk* the remanding order of the supreme court in the words and figures following, to wit:

STATE OF ILLINOIS, *ss*:

Supreme Court.

At a supreme court begun and held at Springfield on the first Tuesday in the month of June, in the year of our Lord one thousand eight hundred and ninety-six, the same being the 2nd day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; Joseph N. Carter, justice; Jacob W. Wilkin, justice; David J. Baker, justice; James H. Cartwright, justice; Jesse F. Phillips, justice.

And afterwards, to wit, on the 17th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, an order was made by said court in the words and figures following, to wit:

CITY OF DANVILLE
vs.
THE DANVILLE WATER COMPANY. } Appeal from Vermilion.

On this day came again the same parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgement aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgement of the circuit court in this behalf rendered be reversed, annuled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court for further proceedings in accordance with the
66 views expressed in the opinion filed in this cause, and the motion heretofore entered to affirm said judgment is denied.

And it is further considered by the court that the said appellant recover of and from the said appellee — by it in this behalf expended, and that it have execution therefor.

I, A. D. Cadwallader, clerk of the said supreme court, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Springfield, this 29th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

A. D. CADAWALLADER,
Clerk of Supreme Court. [L. S.]

10c. rev. stamp.

Filed September 5th, 1899.
M. J. BARGER, *Clerk.*

On the 11th day of September, 1899, there was filed in the office of the clerk of said court a notice, with return of sheriff thereon endorsed, in the words and figures following, to wit:

In the Circuit Court of Vermilion County, State of Illinois, of the October Term, 1899.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } Notice of Reinstatement of Cause, *ect.*

Notice is hereby given that said Danville Water Company has filed in the office of the clerk of said court the remanding order of the supreme court in the said city's appeal, and the said cause will — reinstated on the docket for trial at said term of court.

W. R. LAWRENCE, WITH
REMY & MANN,
Attorneys for Water Company.

67 STATE OF ILLINOIS, }
Vermilion County, } *ss:*

I have duly served the within notice upon the within-named City of Danville by reading the same to Martin B. Bailey, its mayor, and at the same time delivering to him a true copy thereof on the 9th day of September, A. D. 1899.

JAMES SLOAN, *Sheriff,*
By JAMES SLOAN, JR., *Deputy.*

Filed September 11, 1899.
M. J. BARGER, *Clerk.*

Sheriff's Fees.

Serving	.65
Copy	.10
2 miles	.10
Return	.10

On the 2nd day of October, 1899, there was filed in the office of the clerk of said court the additional pleas of defendant in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } ss:

In the Circuit Court of said County, to the October Term, A. D. 1899.

DANVILLE WATER COMPANY }
vs. } Assumpsit.
CITY OF DANVILLE. }

Additional Pleas by the Defendant.

And now comes again the defendant, The City of Danville, by J. H. Lewman, its city attorney, and also by G. F. Rearick, its attorney, and, by leave of court first had and obtained, files the following additional pleas herein, viz:

Plea No. 4.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have or maintain its aforesaid action when, *ect.*, at, *ect.*, against this defendant, because it says, neither at the time of the passages of the ordinances mentioned in the said
68 declaration or at the time of the passage of either of *either of* them, nor at any other time before or at the time of the creation of the indebtedness alleged to exist, was any provision made for the collection of a direct annual tax sufficient to meet the same or any part thereof as it fell due, in manner and form as required by section 12 (12) of article nine (9) of the constitution of this State; and this it is ready to verify; wherefore the defendant prays judgment whether the *the* plaintiff ought to have or maintain its aforesaid action thereof against the defendant, *ect.*

Plea No. 5.

And for a further plea in this behalf the defendants says that the plaintiff ought not to have or maintain its aforesaid action when, *ect.*, at, *ect.*, against this defendant, because it says that the terms and provisions of section four (4) of article seven (7) of an act entitled "An act to provide for the incorporation of cities and villages, approved April 10, 1872, in force July 1, 1872," and all acts amendatory thereof, have not been complied with before the time of the making of the alleged contract declared on, and that no appropriation was then and there previously made concerning the expense for the said water so furnished, and that no appropriation was then and there made prior to the furnishing of said water, nor prior to the making of said alleged contract set up in the declaration; and this the defendant is ready to verify; wherefore it prays judgment whether the plaintiff ought — have or maintain its aforesaid action thereof against this defendant, *ect.*

J. H. LEWMAN, *City Att'y.*
G. F. REARICK,
Att'y for Def'd't.

Filed Oct. 2nd, 1899.
M. J. BARGER, *Clerk.*

On the 2nd day of October, 1899, the plaintiff filed in the office of the clerk of said court its demurrer to said additional pleas in the word- and figures following:

69 STATE OF ILLINOIS, }
Vermilion County. }

Of the October Term, 1899, Vermilion Circuit Court.

DANVILLE WATER COMPANY }
vs. }
CITY OF DANVILLE. }

And the said plaintiff, by W. R. Lawrence and J. B. Mann, its attorneys, comes and says that the additional pleas this day filed by defendant, numbered four and five, are, and each of them, insufficient in law.

Wherefore defendant prays judgment, etc.

W. R. LAWRENCE,
J. B. MANN,
Att'ys for Def't.

Filed October 2nd, 1899.
M. J. BARGER, *Clerk.*

On the 2nd day of October, 1899, the following proceedings were had and entered of record in said court, as follows:

October Term, 1899, October 2nd, 1899.

DANVILLE WATER COMPANY }
vs. } Assumpsit. 11182.
THE CITY OF DANVILLE. }

Now comes the said parties, by their respective attorneys, and this cause is reinstated by the court. Leave is asked by and granted to said defendant to file additional pleas herein. Said plaintiff demurs to additional pleas; which demurrer is by the court sustained; whereupon said defendant excepts. By order of the supreme court the demurrer to the original pleas is overruled as to the first and second pleas; whereupon said plaintiff excepts; and said demurrer is sustained as to the third original plea; and said plaintiff
70 elects to stand by the demurrer to the first and second original pleas; whereupon the court rendered judgment. It is ordered and adjudged by the court that the said plaintiff have and recover of and from said defendant the sum of one thousand nine hundred and thirty dollars ($1,930.00) and costs of suit herein expended, and said defendant excepts to the rendering of said judgment. Now, said plaintiff prays an appeal of the cause to the supreme court; which appeal is by the court granted upon the said plaintiff giving an appeal bond, conditioned according to law, with good security, to be approved by the clerk of this court, in the sum of two hundred dollars ($200), said bond to be filed within thirty (30) days from this date.

On the 14th day of October, 1899, filed in the office of the clerk of said court was the appeal bond of said plaintiff, with the endorsement of the approval of said clerk thereon, in the word- and figures following, to wit:

Appeal Bond from Circuit to Supreme Court.

Know all men by these presents that we, The Danville Water Company (a body politic and corporate), as principal, and G. B. Sidelinger, as surety, of the county of Vermilion and State of Illinois, are held and firmly bound unto the City of Danville, Illinois, in the penal sum of two hundred, 200, dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated, at Danville, this 12th day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

The conditions of the above obligation is such that whereas the said The Danville Water Company did, on the second day of October, one thousand eight hundred and ninety-nine, at a term of court then being holden within and for the fifth judicial circuit, in the county of Vermilion and State of Illinois, obtain a judgment against the above-bounden The City of *of* Danville for the sum of
71 nineteen hundred and thirty dollars and — cents and costs of suit in an action therein pending, wherein it claimed and demanded twenty-six hundred and twenty and sixty-two-hundredths—, from which judgment the said Danville Water Company has prayed for and obtained an appeal to the supreme court of said State:

Now, if the said The Danville Water Company shall duly prosecute said appeal and shall, moreover, pay the amount of the said costs, interest, and damages to be rendered against it, the said Danville Water Company, in case said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

DANVILLE WATER COMPANY, [SEAL.]
By GEO. J. LONG, *Pres't.*
G. B. SIDELINGER. [SEAL.]

Attest: W. J. McGONIGAL, *Sec'y.*

October Term, 1899.

DECEMBER 30TH—Saturday Morning.

Court convened, pursuant to adjournment, at 9 o'clock a. m.; all officers of said court present, as hereinbefore set forth; whereupon certain proceedings were had and entered of record in said court in words and figures following, to wit:

It is ordered that court do adjourn until court in due course of law.

I, M. J. Barger, clerk of the circuit court of Vermilion county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and copy of the appeal bond in a certain cause lately pending in said court, on the law side thereof, wherein The Danville Water Company is plaintiff and The City of Danville is defendant, being No. 11182.

In witness whereof I have hereunto set my hand
72 [SEAL.] and affixed the seal of said court, at Danville, this 10th day of January, A. D. 1900.

M. J. BARGER, *Clerk.*

DANVILLE WATER COMPANY, Appellant,
vs.
CITY OF DANVILLE, Appellee.
} Appellant's Assignment of Errors.

And now comes said appellant, by Remy and Mann and W. R. Lawrence, its attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. The circuit court erred in overruling the demurrer of appellant to the first plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—in said pleas mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

2. The circuit court erred in overruling appellant's demurrer to *to* the first original plea to the amended declaration, because the ordinance of defendant passed the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois, approved June 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by the appellant, and by reason thereof is repugnant to section 10, arti-
73 cle one, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contract-.

III. The circuit court erred in overruling appellant's demurrer to defendant's first original plea to the amended declaration, for the reason that the ordinance of appellee set forth in said plea and passed January 19, 1–95, under the supposed authority of said act of the General Assembly of the State of Illinois approved June 6, 1891, in said first plea set forth, is in violation of section 1 of the 14th amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the laws.

IV. The circuit court erred in overruling the demurrer of appellant to the first original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned, is in vio-

lation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Danville to deprive, appellant of it prosperty without due process of law.

V. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6th, 1891—in said plea mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

VI. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the ordinance of the defendant passed on the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June
74 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by appellant, and by reason thereof is repugnant to section 10, article one, of the Constitution of the United States, which provides that *that* no State shall pass any law impairing the obligation of contract-.

VII. The circuit court erred in overruling the appellant'- demurrer to defendant's second original plea to the amended declaration for the reason that the ordinance of the appellee set forth in said plea and passed January 19th, 1895, under the supposed authority of said act of the General Assemby of the State of Illinois approved June 6th, 1891, in said plea set forth, is in violation of section one of the 14th amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the law-.

VIII. The circuit — erred in overruling the demurrer of the appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned is in violation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Danville to deprive, the appellant of its property without due process of law.

REMY & MANN,
W. R. LAWRENCE,
Attorneys for Appellant.

75 In the Supreme Court of the State of Illinois, Central Grand Division, February Term, A. D. 1900.

DANVILLE WATER CO., Appellant, *vs.* CITY OF DANVILLE, Appellee. } Appeal from the Circuit Court of Vermilion County.

Cross-errors Assigned by Appellee.

And now comes The City of Danville, appellee, by John H. Lewman, city attorney, and Geo. F. Rearick, its attorneys, and shows the court here that there is manifest error in the record herein in this, to *say*.

1. It was error to sustain a demurrer to the fourth plea filed by the defendant.
2. It was error to sustain a demurrer to the fifth plea filed by the defendant.
3. It was error to render judgment against the said defendant for the sum of nineteen hundred and thirty dollars or any other sum.
4. It was error not to enter judgment for the defendant.
5. The judgment of the circuit court should have been against the plaintiff for costs of suit.

Wherefore, for the reasons above set forth and which the record will sustain, the judgment of said circuit court ought to be reversed.

JOHN H. LEWMAN,
City Attorney.
GEO. F. REARICK,
Att'y for Appellee.

76 And be it further remembered that afterwards, to wit, on the said 6th day of February, A. D. 1900, there was filed in the office of the clerk of said supreme court a certain other transcript of a record in which the same party is plaintiff and the same party defendant; which said record is in the words and figures following, to wit:

77 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *ss.*:
Vermilion County, }

In Circuit Court, January Term, A. D. 1896.

Pleas before the Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois and presiding judge of the circuit court of Vermilion county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Danville, in said county, on the twentieth (20th) day (being the third Monday) of January, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and twentieth.

Present: Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois; Seymore

G. Wilson, State's attorney; Martin J. Barger, clerk; William C. Thompson, sheriff.

Attest: MARTIN J. BARGER, *Clerk.*

First Day, January Term, 1896.

MONDAY, *January 20th*, 1896.

Court convened at 9 o'clock a. m. by due proclamation according to law.

On the 23rd day of November, 1895, there was filed in the office of the clerk of said court a præcipe for summons in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE.

Præ. for Sum.

Assumpsit.

Damages, $5,000.00.

78 STATE OF ILLINOIS, }
Vermilion County, } *ss.:*

In the Vermilion County Circuit Court, January Term, A. D. 1896.

In the Matter of DANVILLE WATER COMPANY, Plaintiff,
vs.
CITY OF DANVILLE, Defendant.

To the clerk of said court:

You will please issue a summons in the above-entitled cause directed to the sheriff of said county in plea of assumpsit, returnable at the January term of said court, A. D. 1896, to the damage of the plaintiff of five thousand dollars.

Dated the 22nd day of November, 1895.

REMY & MANN, *Att'ys.*
W. R. LAWRENCE.

Issued, as requested, November 23, 1895.

M. J. BARGER, *Clerk.*

Filed November 23rd, 1895.

M. J. BARGER, *Clerk.*

On the 23rd day of November, 1895, there was issued out of the office of the clerk of said court a summons in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County. }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon the City of Danville, if it shall be found in your county, personally to be and appear before the circuit court of said Vermilion county on the first day of the next term thereof, on the 20th day of January next, to answer unto the Danville Water Company in a plea of assumpsit to the damage of the said plaintiff, as it says, in the sum of five thousand dollars ($5,000.00) *dollars*, and have you then and there this writ, with
79 an endorsement thereon in what manner you have executed the same.

Witness M. J. Barger, clerk of our said court, and the seal thereof, at Danville, this 23rd day of November, A. D. 1895.

[SEAL.] M. J. BARGER, *Clerk.*

On the 23rd day of November, 1895, there was returned to and filed in the office of the clerk of said court the said summons, with the return of the sheriff thereon indorsed, in the words and figures following, to wit:

Vermilion County Circuit Court, January Term, 1896.

DANVILLE WATER COMPANY }
vs. } No. 11354.
CITY OF DANVILLE. }

Circuit Court Summons.

Filed November 23rd, 1895. M. J. Barger, Clerk.

I served this writ on the within-named defendant, W. L. Runyan, mayor of the city of Danville, by reading the same to him and at the same time delivering him a true copy thereof this 23rd day of November, 1893.

W. C. THOMPSON, *Sheriff*,
By JAMES SLOAN, *Deputy Sheriff*.
REMY & MANN &
W. R. LAWRENCE, *Attorneys*.

Fees.

Service	.65
Copy	.10
2 miles, travel	.10
Return	.10
	$.95

On the 10th day of January, 1896, there was filed in the office of the clerk of said court by plaintiff its declaration in the words and figures following, to wit:

80 In the Circuit Court of Vermilion County, January Term, A. D. 1896.

STATE OF ILLINOIS, } ss:
Vermilion County, }

Danville Water Company (a corporation), plaintiff in this suit, by Remy & Mann & W. R. Lawrence, attorneys, complain of City of Danville, Illinois, defendant in this suit, summoned, etc., of a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit, on the 30th day of October, in the year of our Lord one thousand eight hundred and eighty-five, at Danville, to wit, at the county aforesaid, became and was indebted to the said plaintiff in the sum of 2,620.62 dollars of lawful money of the United States of America for divers goods, wares, and merchandise the plaintiff before that time sold and delivered to the said defendant and at the special instance and request of the said defendant, and, being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested;

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods,

81 wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested, and the said plaintiff avers that the said goods, wares, and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the sum of 2,620.62 dollars of like lawful money, as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year and at the place aforesaid, had notice;

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, was indebted to the said plaintiff in the further sum of 2,620.20 dollars of like lawful money, as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant, and in the like sum for other money by the said plaintiff before that time paid out and expended for the said defendant and at the like request of the said defendant, and in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and in the like sum for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said

defendant to said plaintiff, and in the like sum for the price and value of work then done and material for the same provided by the said plaintiff for the said defendant and at the like request of the said defendant, and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, *it* undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested;

82 And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrears and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of 2,620.62 dollars of like lawful money, as aforesaid, and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, *it* undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested;

And also whereas the defendant afterwards, to wit, on the 30th day of October, 1895, at the county and State aforesaid, became and was indebted to the plaintiff in the further sum of $2,620.20 for the rental and use of 158 fire-hyrants theretofore had and enjoyed and used by defendant, and which were then and there furnished by plaintiff, for which defendant then and there undertook and agreed to — plaintiff the sum of $2,620.62;

Nevertheless, the said defendant (although often requested, etc.) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and does still refuse, to the damage of the said plaintiff five thousand dollars, and therefore the plaintiff brings suit, etc.

REMY & MANN &
W. R. LAWRENCE,
Plaintiff's Attorneys.

83 City of Danville, Illinois, to Danville Water Company, Dr.

To the rental and use of 158 fire-hydrants from August 1st to October 30th, 1895, inclusive	$2,620.62

City of Danville to Danville Water Company, Dr.

To goods, wares, and merchandise sold and delivered	$5,000
To money lent and advanced	5,000
To money paid, laid out, and expended	5,000
To money had and received to and for the use of said plaintiff	5,000

To money due for interest and forbearance..... 5,000
To labor, services, and material..... 5,000
To balance due on account stated..... 5,000

Filed this 10th day of January, 1896.
M. J. BARGER, *Clerk.*

REMY & MANN &
W. R. LAWRENCE,
Plaintiff's Attorneys.

On the 22nd day of January, 1896, there was filed in the office of the clerk of said court a demurrer to said declaration in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE.

Demurrer to Declaration.

STATE OF ILLINOIS, } ss:
Vermilion County, }

In Circuit Court of said County, January Term, A. D. 1896.

CITY OF DANVILLE
als.
DANVILLE WATER COMPANY. } Assumpsit.

And now comes the defendant, by G. F. Rearick, its city attorney, and defends and says that the declaration of the plaintiff
84 herein is not sufficient in law, nor is the defendant bound by the law to answer to the matters and facts therein alleged; and this the defendant is ready to verify; wherefore it demurs and prays judgment against the said plaintiff for want of a sufficient declaration in this behalf, and that the said plaintiff may be barred from further having or maintaining its action thereof against the defendant, etc.

G. F. REARICK,
City Attorney.

Filed Jan'y 22d, 1896.
M. J. BARGER, *Clerk.*

On the 21st day of March, 1896, there was filed in the office of the clerk of said court plaintiff's amended declaration in the words and figures following:

(See page 80 of this record for order of court.)

STATE OF ILLINOIS, }
Vermilion County, } ss:

Vermilion County Circuit Court, January Term, A. D. 1896.

DANVILLE WATER COMPANY }
vs. }
CITY OF DANVILLE. }

The said plaintiff, by Remy & Mann and W. R. Lawrence, its attorneys, by this its amended declaration, amended by leave of the court first had and obtained, complains of the said defendant of a plea of trespass on the case on promises:

For that whereas the said plaintiff, on, to wit, the ninth day of November, A. D. 1882, was and ever since that time has been and now is a corporation duly organized under the general incorporation laws of the State of Illinois then in force, and as such corporation having the power to make the several contracts and do and perform the several acts hereinafter mentioned, and the said defendant was and ever since has been and now is a municipal corporation created and formed under the laws of the State of Illinois, known as chapter twenty-four of the Revised Statutes of said State, and the amendments thereto, and on the day and year aforesaid there was duly
85 and lawfully passed by the city council of the said defendant an ordinance which was afterwards approved by the then mayor of said city and duly published according to law on the 11th day of November, A. D. 1882; which said ordinance is in the words and figures following, to wit:

An ordinance providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. The privilege is hereby granted to the Danville Water Company, a corporation duly organized and existing under the laws of the State of Illinois, and to its successors and assigns, for thirty years from the passage of this ordinance, to construct and maintain within and near the city of Danville, water works for supplying the said city and the inhabitants thereof and of the adjacent municipalities and territory with water for public and private uses, and to use the streets, alleys, sidewalks and public grounds, and the rivers, streams, and bridges of the city of Danville, within its present and future corporate limits, for placing, taking up and repairing mains, hydrants and other structures and devices requisite for the service of water.

2. The source of the water shall be the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of stone or brick of ample size to accommodate the machinery of the said water

company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture, before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of suitable size to furnish an abundant supply of water for present and future requirements. The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose coupling now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city six simultaneous streams through a fifty-feet section of hose and a one-inch nozzle, to a height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams.

3. The said water company shall commence in good faith the construction of said water works within sixty days from the passage and approval of this ordinance, and shall have in successful operation at least eight miles of water mains in said city in the month of September, in the year 1883, and shall have the said works fully completed, with ten miles of water mains in said city, in the month of December, in the year 1883. The lines of water mains shall be so located and laid as to afford fire protection to the several wards, there being no less than one mile of mains in each ward.

4. All mains shall be so located and laid as not to interfere unnecessarily with any pipes, mains, conduits and sewers existing at the time of such location and laying. There shall be no unreasonable or unnecessary obstruction of the streets, alleys, sidewalks or public grounds of the said city by said water company in constructing the said works or in placing, taking up or repairing any mains, hydrants or other structures or devices requisite for the service of water, and the said water company, after using the said streets, alleys, sidewalks and public grounds, shall restore them, within a reasonable time, as nearly as practicable to their former condition, and shall hold the said city harmless from any and all damages arising from negligence or mismanagement of said water company or its employees in constructing, extending or operating said works. In all street excavations the said water company shall keep red danger lights burning at night along the line of the same, at least one light to every one hundred and fifty feet, and shall erect and maintain sufficient barricades at the ends of said excavations and at all streets and alleys where they cross said excavations. If the said city shall change the surface of any street or alley in which the said water company shall have laid a main, and if such change shall exceed one foot, and if the

said water company shall relay its main on account of such change, then the said city shall reimburse to the said water company the actual costs thereof.

5. If at any time it shall appear that said water company by extending its mains, will derive a steady additional revenue of not less than one hundred dollars per annum for every three hundred feet of such extension, either from responsible private consumers, secured by written agreement, or from the rental of public fire-hydrants upon the terms hereinafter stated, then the city council may by ordinance require the said water company to make such extension without unnecessary delay. But at the
88 expiration of thirty years from the passage and approval of this ordinance, all right of said city of requiring extensions shall cease, unless the rights, privileges and contract hereby granted and made shall have been renewed.

6. The said company shall not charge to consumers during the continuance of the franchises granted by this ordinance exceeding the following maximum annual rates. But it shall have the right, at its will at any time, to insert a meter into the service pipe of any consumer, and to supply him at meter rates:

Banks, with one basin	$10.00
Bakery, each oven	$10.00 to 30.00
Barber shop, first chair	6.00
Barber shop, each additional chair	3.00
Bath, without heating apparatus, private	4.00
Bath, with heating apparatus, private	5.00
Bath, in boarding-house or hotel, first tub	8.00
Bath, in boarding-house or hotel, each additional tub	4.00
Bath, public, not less than	12.00
Brewery, per barrel brewed	.05
Billiard saloon, each table	4.00
Boarding-house, per room (no license less than $10.00)	1.50
Book-bindery, not less than	10.00
Brick-work, per 1,000 laid	.10
Brick yard, each gang of hands	25.00
Butcher shop, steam extra	10.00
Candy manufacturers	15.00 to 30.00
Cigar manufacturers (no license less than $10.00), per hand.	2.00
Confectioners	10 to 30.00
Cow-, each	2.00
Distilleries, for each barrel distilled	.10
Dyeing and scouring	10.00 to 30.00
Forge, first fire	5.00
Forge, each additional fire	2.00
Fountain, six months (running not more than six hours per day) according to size of jet	12.00 to 15.00
89 Halls and theatres	12.00 to 30.00
Horse, one, including washing carriage	4.00
Horse, each additional	3.00
Horse, for private stable, not less than	3.00

Hotel, per room	Special
Ice-cream saloon	10.00 to 20.00
Laundry	24.00 to 100.00
Offices or sleeping rooms	5.00 to 10.00
Oyster saloons	10.00 to 20.00
Printing offices, six hands or less (engine extra)	12.00
Printing office, each additional hand	1.50
Photograph galleries	10.00 to 15.00
Plastering, per square yard	.00½
Residence, occupied by one family, for domestic use, one to three rooms	5.00
Residence, each additional room	1.00
Restaurant	12.00 to 20.00
Saloons	10.00 to 30.00
Sprinkling, private garden ¾ hose, ⅛ nozzle, first fifty yards, per square yard	.04
Sprinkling, all over fifty yards, per square yard	.02
Sprinkling carts, per month	Special
Sprinkling sidewalk to center of street, ¾ hose, ⅛ nozzle, 1-½ hours per day (no license less than $5.00), per foot front	.10
Stable, livery, board, or sale, six horses or less, including carriage-washing	12.00
Stable, each additional stall	1.50
Steam boilers, rated per horse-power, from one to ten-horse power (working ten hours per day)	4.00
Steam boilers, each additional up to twenty	3.00
Steam boilers, over twenty	Special
Stone-work, per perch	.07
Stores and shops	8.00 to 20.00
Tenement, (no license less than $6.00) per room	1.50
90 Tobacco manufacturers, (no license less than $5.00) per hand	1.50
Urinal basins	$6.00 to 12.00
Water-closets, private	5.00
Water-closets, public	10.00
Wash-basins, in dwellings	2.00
Wash-basins, in hotels	3.00

Meter Rates.

100 gallons to 500, per day, per 100 gallons	.05
500 to 1,500 gallons per day, per 100 gallons	.04
1,500 — 3,000 gallons per day, per 100 gallons	.03½
3,000 to 5,000 gallons per day, per 100 gallons	.03
10,000 or more gallons per day, per 100 gallons	.02

The rates in this section prescribed shall be paid quarterly, except sprinkling rates, which shall be paid for the season.

7. At the expiration of five, ten and twenty years after the completion of said works, and at the expiration of said term of thirty years, and at the expiration of any renewed term thereof, said city

shall have the right to purchase said works with its privileges and property at a fair valuation, to be ascertained as follows: In the event said city and said water company shall fail to agree on the price, three disinterested appraisers of good intelligence, not residents of the county of Vermilion, shall be chosen and sworn to determine the value thereof. One to be appointed by the said city, one by the said water company, and the third by the two so appointed. When said three persons shall have been so chosen, and before they determine said value, the said city and the said water company shall each at their option have the right to call non-resident experts, not exceeding three in behalf of each party, to give testimony under oath before said three appraisers as to such value.

91 The said three appraisers shall then proceed to determine such value, and in so doing, they shall take into consideration the productive value of the said water works, rights, privileges and property. And in the event there being no existing fire-hydrant contract with said city at the date of such appraisement, the last existing contract shall be included in the estimated productive value, as though still in existence. When the three or their majority shall have made an award in writing, ten per centum shall be added to the amount thereof; provided, the appraisal be made at the expiration of five years, but no percentum shall be added to the ascertained value of said property after the first period of five years. And the said city shall then have the option of refusing to pay after such award shall have been made, or of paying in cash to said water company within three months from the date of such award, the amount thereof and the additional ten per centum thereon. If the said city shall refuse to purchase as aforesaid, it shall pay the necessary expenses incurred in making said award. The said city shall in such purchase, assume and perform all unfinished contracts made by said water company for furnishing water, and shall assume and pay all debts and obligations of the water company, not exceeding in amount the said purchase-money to be paid by said city. And all sums so paid shall be in part discharge of said purchase-money. But if said city shall determine to avail itself of this right to purchase, it shall, in all cases, give written notice to the said water company of such determination, at least one year before the expiration of said privileges, or before the other dates of purchase.

8. In consideration of the benefits which will be derived by the said city and its inhabitants from the construction and operation of the said water works, and in further consideration of the water supply hereby secured for public uses, and as the inducement to

92 said water company to accept the provisions of this ordinance and contract, and to enter upon the construction of said water works, the right and privileges hereby granted to and vested in said water company shall remain in force and effect for thirty years from the passage of this ordinance; and for the same consideration and as the same inducement, the city of Danville hereby rents of the Danville Water Company for the uses hereinafter stated, one hundred fire-hydrants of the character hereinafter described

for and during the term of thirty years from the passage of this ordinance, and agrees to locate them promptly along the line of the street mains, on demand of said company, and on submission by it to said city of a plan of the location of said street mains, and agrees to use the said hydrants carefully and to pay said water company for any injury which may happen to any of them when used by any officer, servant or member of the fire department of said city, and agrees to pay rent for said one hundred hydrants at the rate of seventy-five dollars each per year, and agrees to pay during the unexpired term of said ordinance and privilege, for any additional fire-hydrants which the city may hereafter locate at the rate of sixty-two and fifty one-hundredths dollars each, per year, for the next forty additional hydrants, and for all fire-hydrants in excess of one hundred and forty at the rate of fifty dollars each, per year; all of which sums shall be paid by said city to said water company, beginning from the dates when each of such hydrants shall be put into successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and termination upon the expiration of said term of thirty years, or upon the purchase of said works and their privileges and property by the said city.

9. The first hydrants rented *to* the said city of the said water company shall be used only for the extinguishment of fires, and shall constantly furnish effective fire streams without the aid of
93 portable engines, and flushing gutters and sewers through a hose and fire-nozzle. In flushing, no one hydrant shall be used exceeding ten minutes in one week, nor shall more than one hydrant opening be turned on at the same time, nor shall any flushing be done during the existence of fire without notice to the water company.

10. The said water company shall constantly keep all fire-hydrants rented of it by said city supplied with water for fire service, and shall maintain them in effective working order. The chief of the fire department of said city, or in his absence the officer in charge thereof, shall have charge and control of said fire-hydrants, and may at any time cause such hydrants to be inspected, and if on such inspection any of said hydrants are found to be out of working order, he shall forthwith notify said water company in writing, specifying the hydrant or hydrants out of working order, and shall also report to the city council the date of such examination and the result thereof and his subsequent action in the premises. And in case any such hydrant shall remain out of repair for one week or more after the said water company shall have been so notified in writing, the said city shall be entitled to deduct from said hydrant-rental account, the sum of ten dollars per week so long (as) such hydrant is not in working order: Provided that the total amount so deducted shall not exceed double the yearly rental of such hydrant or hydrants. And in case that the said water company, after said water works have been completed and in successful operation, shall suffer a suspension of the supply of water for both domestic and fire purposes exceeding thirty days, then and in that

case said water company shall forfeit all privileges hereby granted, unless such suspension shall have been caused — circumstances beyond the control of the said water company.

11. The said water company or assigns, in consideration of said city renting such number of fire-hydrants, hereby agree to
94 gratuitously furnish and erect a combined spray and drinking fountain for man and beast, flowing twelve hours *per diem*, (and not exceeding two thousand gallons *per diem*), on the public square in said city; and also to furnish free, water for said fountain, and in addition thereto water for two additional drinking fountains, flowage not to exceed one thousand gallons *per diem*, fountains to run except during freezing weather, also — free for all city offices and quarters of the fire department situated on lines of water mains in said city, (for drinking and washing purposes), for and during the term and continuance of this privilege and ordinance. Whenever the city council shall decide to erect additional public drinking fountains for man and beast, such fountains shall be located on the lines of water mains at such point or points as the city council may designate, the annual rental of such additional fountains shall be one hundred dollars each per annum, payable quarterly as for fire-hydrants. All public drinking fountains shall be provided with automatic valves, or shall furnish a constant-flowing stream through a small orifice, at the option of said water company or assigns to prevent the waste of water.

12. The said water company shall provide and maintain at its own expense, a telephone or other electric line affording connection between its pump-house and each principal fire-department station, for use during fires, the city to furnish its own instruments.

13. The said city shall adopt and enforce ordinances protecting the said water company in the safe and unmolested exercise of these franchises, and against fraud and imposition, and against injury to its property and waste of water by consumers, and the said water company may make and enforce as part of the conditions upon which it will supply water to consumers, all needful rules and regulations not inconsistent with law.

95 14. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of the terms, obligations and conditions of this ordinance, and upon such acceptance this ordinance shall constitute the contract, and shall be the measure of the rights and liabilities of the said city and of the said water company.

15. All ordinances and parts of ordinances inconsistent with the provisions of this ordinance, and especially the ordinance entitled: "An ordinance to provide for the construction and maintenance of water works for the supply of water to the city of Danville, Illinois, and its inhabitants, and for the prevention and extinguishment of fires in said city," passed and approved April 22d, 1882, are hereby repealed, and this ordinance shall take effect from and after its passage and publication.

Passed and approved this 9th day of November, A. D. 1882.

L. T. DICKASON, *Mayor.*

Attest: A. C. FREEMAN,

[SEAL.] *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the first day of May, A. D. 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the mayor of said defendant, and was duly published according to law on the
96 eighth day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

An ordinance to amend and carry out an ordinance of the city council of the city of Danville entitled "An ordinance providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882.

Whereas, the Danville Water Company has commenced in good faith the construction of its water works within sixty days from the passage and approval of an ordinance of the city council of the city of Danville entitled "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882, which commencement in good faith of said construction is hereby acknowledged; and

Whereas, the Danville Water Company has submitted to the city of Danville a plan of the location and sizes of its street mains, and the city of Danville has thereupon, on demand of said water company, located on said street mains the one hundred hydrants rented by the said city of Danville of the said water company; and

Whereas, the Danville Water Company proposes, in addition to connecting its works for a water supply with the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street, to dig a well or wells north of Fairchild street, in the vicinity of its pumping station, and to utilize for water supply the water pumped by it from such well or wells so dug:

Now, for amendment of said ordinance in conformity with
97 the foregoing, and for the purpose of carrying out the said ordinances:

Be it ordained by the city council of the city of Danville, in manner following—that is to say:

1. That section 2 of an ordinance of the city of Danville en-

titled "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, 1882, which reads as follows:

"2. The source of water supply shall be the North fork of the Vermilion river, at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of stone or brick, of ample size to accommodate the machinery of the said water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of suitable requirements. The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose couplings now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion; when they shall throw from separate hydrants in the business portion of said city six simul-
98 taneous fire streams through a fifty-feet section of hose and a one-inch nozzle to a height — one hundred feet, and when they shall throw at another time from separate hydrants in other portions of said city four simultaneous effective fire streams."

Be, and the same is, hereby amended to read as follows:

2. The Danville Water Company shall take its water supply from the North fork of the Vermilion river at a point above the present sewerage of the city of Danville, north of Fairchild street, or from a well or wells dug by it north of Fairchild street, in the vicinity of its pumping station, or from North fork and such well or wells, changing from one to the other, or to both sources of supply, from time to time at its discretion. The pump-house shall be of stone or brick, of ample size to accommodate the machinery of the said water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch; and the locations and sizes of those permitted to be laid may be as follows, the said water company having the right to select the side of the street:

From the pumping station to the intersection of Lincoln and Denmark streets, 14 inches diameter.

In Woodbury street, from Franklin to Vermilion streets, 6 inches diameter.

In Griggs street, from Junction avenue, to Collett street, 6 inches diameter.

In Lincoln street, from Denmark to Harmon avenue, 14 inches diameter.

99 In Williams street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Williams street, from Vermilion to Section streets, 8 inches diameter.

In Williams street, from Section to Junction avenue, 6 inches diameter.

In Ann street, from Harmon avenue to Gilbert street, 4 inches diameter.

In Seminary street, from Grant street to Harmon avenue, 6 inches diameter.

In Madison street, from Mill street to Harmon avenue, 4 inches diameter.

In Madison street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Madison street, from Vermilion to Depot streets, 6 inches diameter.

In Harrison street, from Mill to Pine streets, 4 inches diameter.

In North street, from Robinson to Depot streets, 4 inches diameter.

In Main street, from Pine to Franklin streets, 8 inches diameter.

In Main street, from Franklin to Gray streets, 10 inches diameter.

In Main street, from Gray to Collett streets, 6 inches diameter.

In South street, from Vermillion to Buchanan streets, 6 inches diameter.

In Chestnut street, from College to Elizabeth streets, 4 inches diameter.

In Grant street, from Lincoln to Seminary streets, 6 inches diameter.

100 In Mill street, from Madison to Harrison streets, 6 inches diameter.

In Harmon avenue, from Lincoln to Williams streets, 14 inches diameter.

In Harmon avenue from Williams to Mansson streets, 10 inches diameter.

In Robinson street, from Harrison to North streets, 4 inches diameter.

In Gilbert street, from Williams to Madison streets, 6 inches diameter.

In Pine street, from Madison to Main streets, 8 inches diameter.

In Oak street, from Seminary to Madison streets, 4 inches diameter.

In Franklin street, from Woodbury to Williams streets, 4 inches diameter.

In Franklin street, from Williams to Madison streets, 6 inches diameter.

In Franklin street, from Madison to Main streets, 4 inches diameter.

In Walnut street, from Williams to Main streets, 4 inches diameter.

In Vermilion street, from Woodbury to Williams streets, 4 inches diameter.

In Vermilion street, from Williams to Madison streets, 8 inches diameter.

In Vermilion street, from Madison to Main streets, 10 inches diameter.

In Vermilion street, from Main to South streets, 6 inches diameter.

In Hazel street, from Williams to Madison streets, 4 inches diameter.

In Hazel street, from Madison to Main streets, 6 inches diameter.

101 In Hazel street, from Main to South street, 4 inches diameter.

In Hazel street, from South to Green streets, 6 inches diameter.

In Jackson street, from Williams to Madison streets, 6 inches in diameter.

In Jackson street, from Madison to North streets, 4 inches diameter.

In Depot street, from Madison to Main streets, 6 inches diameter.

In Gray street, from Main to South streets, 4 inches diameter.

In College street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from Chestnut to Wayne streets, 4 inches diameter.

In Junction avenue, from Williams to Griggs streets, 6 inches diameter.

In Buchanan street, from Main to South streets, 4 inches diameter.

In Collett street, from Main to Griggs street, 4 inches diameter.

The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose couplings now in use by the fire department of said city.

Said fire-hydrants so rented by said city shall be set by the said water company on whatever corner of the intersection it may select, but in all cases on the side of the street nearest to the main with which they are to connect; and they are hereby located as follows:

102 1. At the intersection of Woodbury and Franklin streets.

2. At the intersection of Woodbury and Walnut streets.

3. At the intersection of Woodbury and Vermilion streets.

4. At the intersection of Clay and Franklin streets.

5. At the intersection of Tincher and Denmark streets.

6. In Franklin street, at the north side of the right of way of the I. B. & W. railway.
7. In Vermilion street, at the south side of the right of way of the I. B. & W. railway.
8. At the intersection of Lincoln and Denmark streets.
9. At the intersection of Lincoln and Sheridan streets.
10. At the intersection of Lincoln and Grant streets.
11. At the intersection of Lincoln and Chandler streets.
12. At the intersection of Williams street and Harmon avenue.
13. At the intersection of Williams and Robinson streets.
14. At the intersection of Williams and Gilbert streets.
15. At the intersection of Williams and Oak streets.
16. At the intersection of Williams and Franklin streets.
17. At the intersection of Williams and Walnut streets.
18. At the intersection of Williams and Vermilion streets.
19. At the intersection of Williams and Hazel streets.
20. At the intersection of Williams and Jackson streets.
21. At the intersection of Williams and Depot streets.
22. At the intersection of Williams and Section streets.
23. At the intersection of Wellington and Junction streets.
24. At the intersection of Wellington and Collett streets.
25. In Harmon avenue, at the north side of the right of way of the I. B. & W. railway.
26. At the intersection of Kimber and Grant streets.
27. At the intersection of Cherry and Jackson streets.
28. In Franklin street, half way between Williams and Seminary streets.
103 29. In Vermilion street, half way between Williams and Seminary streets.
30. At the intersection of Ann and Gilbert streets.
31. At the intersection of Seminary and Grant streets.
32. At the intersection of Seminary street and Harmon avenue.
33. At the intersection of Seminary and Gilbert streets.
34. At the intersection of Seminary and Franklin streets.
35. At the intersection of Seminary and Vermilion streets.
36. At the intersection of Seminary and Jackson streets.
37. At the intersection of Seminary and Collett streets.
38. At the intersection of Madison street and Harmon avenue.
39. At the intersection of Madison and Robinson streets.
40. At the intersection of Madison and Gilbert streets.
41. At the intersection of Madison and Pine streets.
42. At the intersection of Madison and Franklin street.
43. At the intersection of Madison and Walnut streets.
44. At the intersection of Madison and Vermilion streets.
45. At the intersection of Madison and Hazel streets.
46. At the intersection of Madison and Jackson streets.
47. At the intersection of Madison and Depot streets.
48. At the intersection of Herman and Collett streets.
49. At the intersection of Harrison and Franklin streets.
50. At the intersection of Harrison and Walnut streets.
51. At the intersection of Harrison and Vermilion streets.

52. At the intersection of Harrison and Hazel streets.
53. At the intersection of Harrison and Jackson streets.
54. At the intersection of Harrison and Depot streets.
55. In Vermilion street, at the corner of the alley between Harrison and North streets.
56. At the intersection of North and Robinson streets.
104 57. At the intersection of North and Pine streets.
58. At the intersection of North and Franklin streets.
59. At the intersection of North and Walnut streets.
60. At the intersection of North and Vermilion streets.
61. At the intersection of North and Hazel streets.
62. At the intersection of North and Jackson streets.
63. At the intersection of North and Depot streets.
64. At the intersection of North street (extended) and Collett street.
65. In Franklin street, at the corner of the alley between North and Main streets.
66. In Walnut street, at the corner of the alley between North and Main streets.
67. At the intersection of Van Buren alley and Vermilion street.
68. At the intersection of Van Buren alley and Hazel street.
69. At the intersection of Van Buren alley and Depot streets.
70. At the intersection of Main and Pine streets.
71. In Main street, half way between Franklin and Pine streets.
72. At the intersection of Main and Franklin streets.
73. At the intersection of Main and Walnut streets.
74. In Main street, at the corner of the First national bank.
75. At the post-office corner.
76. At the intersection of Main and Hazel streets.
77. In Main street, at the corner of the alley between Hazel and Jackson streets.
78. At the intersection of Main and Jackson streets.
79. At the intersection of Main and Depot streets.
80. At the intersection of Main and Gray streets.
81. At the intersection of Main and McDonald streets.
105 82. At the intersection of Main and Park streets.
83. At the intersection of Main and Fremont streets.
84. At the intersection of Main and Clark streets.
85. At the intersection of Main and Buchanan streets.
86. At the intersection of Main and Collett streets.
87. At the intersection of South and Vermilion streets.
88. At the intersection of South and Hazel streets.
89. At the intersection of South and Jackson streets.
90. At the intersection of South and Gray streets.
91. At the intersection of South and Park streets.
92. At the intersection of South and Elizabeth streets.
93. At the intersection of South and Buchanan streets.
94. At the intersection of Green and Hazel streets.
95. At the intersection of Green and College streets.
96. At the intersection of Chestnut and College streets.
97. At the intersection of Chestnut and Park streets.
98. At the intersection of Chestnut and Elizabeth streets.

99. At the intersection of Pearl and Elizabeth streets.

100. At the intersection of Wayne and Elizabeth streets.

Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city, six simultaneous fire streams, through a fifty-feet section of hose and a one-inch nozzle, to the height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams: Provided, however, that nothing in this section shall be so construed as to operate against the full force and effect of section 9 and that part of section 2 of the original ordinance which provides for the laying of mains of suitable size to furnish an abundant supply of water for present and future requirements.

106 2. This ordinance shall become binding as a part of the contract existing between the city of Danville and the Danville Water Company in the event that said water company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of it.

3. All ordinances and resolutions and parts of ordinances or resolutions in conflict herewith are hereby repealed, and this ordinance shall take effect at its passage and publication.

Passed by city council, May 1st, A. D. 1883. Approved June 2d, 1883.

L. T. DICKASON, *Mayor.*

Attest:

[SEAL.] A. C. FREEMAN, *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 7th day of June, A. D. 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 8th day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for an extension of the pipe system of the Danville Water Company, contracting with it for an additional public fire-hydrant, and locating the free public fountain.

"Be it ordained by the city council of the city of Danville, in manner following, that is to say:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system by lay-

107 ing a six-inch water main from the intersection of Griggs street and Junction street northwardly seven hundred feet toward the car shops of the Chicago and Eastern Illinois Railroad Company; and that the city of Danville further requests and hereby requires the

Danville Water Company to put up at the end of the said extension hereinbefore required to be made additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and the city of Danville hereby rents of the Danville Water Company the said additional fire-hydrant for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance, and agrees and binds itself to pay therefor to the Danville Water Company at the rate of sixty-two and fifty-hundredths dollars per annum, beginning from the date when such hydrant shall be put in successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and terminating upon the expiration of the said term of thirty years, or upon the purchase of the said works and their privileges and property by the said city.

"SECTION 2. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall within ten days from the passage and publication of this ordinance file with the city clerk its written acceptance of it.

"SECTION 3. The Danville Water Company shall erect the free public fountain provided for by the eleventh section of the said ordinance of November 9th, 1882, in the center of the public square in said city of Danville.

"Passed and approved this 7th day of June, A. D. 1883.

"(Signed) L. T. DICKASON, *Mayor.*

"Attest: A. C. FREEMAN, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with
108 the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the seventh day of August, A. D. 1884, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 15th day of August, A. D. 1884; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the pipe system of the Danville Water Company and renting of it two additional hydrants.

"Be it ordained by the city council of the city of Danville, in manner following, that is to say:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system along North street, to reach the places on said street hereinafter described, and that the city of Danville further requests and hereby requires the Danville Water Company to put two additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and in consideration of the compliance, by the Danville Water Company,

with the foregoing requests and requirements, the city of Danville hereby rents of the Danville Water Company, the said two additional hydrants located in the following-described places, to wit:

"No. 102. At the intersection of North and Hayes street.

"No. 103. At the intersection of Harrison and Mill streets.

"And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance, at the rate of sixty-two dollars and fifty cents per hydrant per annum, beginning from the date when such hydrants shall
109 respectively be put into successful operation, in quarter-yearly installments, on the first days of February, May, August and November of each year, and terminating upon the expiration of the said term of thirty years or upon the purchase of said works and their privileges and property by the said city.

"2. This ordinance shall become binding as a contract, of the said city of Danville in event that the Danville Water Company shall, within ten days from the publication of this ordinance, file with the city clerk its written acceptance of it.

"Passed and approved August 7th, A. D. 1884."

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defe[illegible] a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the first day of April, A. D. 1886, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the ninth day of April, A. D. 1886; which said ordinance is in the words and figures following, to wit:

An ordinance providing for the extension of the pipe system of the Danville Water Company and renting of it four additional fire-hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the following manner, that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system, by laying the following-described water mains: A four-inch main in Wayne street between the Wabash hospital and Buchanan street; a four-inch main in Oak street between Seminary and Ann street; a six-inch main in Buchanan street between Wayne and Commercial streets; a six-inch main in Collett street, between Griggs street and the first alley
110 north of the I. B. & W. railway tracks. And hereby requires the Danville Water Company to put up at the places hereinafter named, four additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved on November 9th, 1882; and in consideration of the compliance of the Danville Water Company with the foregoing requests and require-

ments, the city of Danville hereby rents of the Danville Water Company the four additional fire-hydrants, to wit:

No. 104. At the intersection of Oak and Ann streets.

No. 105. At the intersection of Buchanan and Commercial streets.

No. 106. At the intersection of Junction avenue and I. B. & W. railway tracks.

No. 107. At the intersection of Collett street and first alley north of I. B. & W. railway track.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance, at the *at the* rate of sixty-two dollars and fifty cents per hydrant per annum, beginning with the date when said hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first days of February, May, August and November of each year, subject to termination by the purchase of the said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville, in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed and approved this first day of April, 1886.

JOHN BEARD, *Mayor.*

Attest: A. C. FREEMAN, *City Clerk.*

111 And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the nineteenth day of June, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 24th day of June, A. D. 1890; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and renting of it five additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a four-inch main in Vermilion street from Woodbury to English street, and by laying a four-inch main in Franklin street from Woodbury street to Townsend avenue, and that the city of Danville hereby requires the said water company to put up at the places hereinafter named five additional fire-hydrants of the kinds required by the water-works ordinance of the city of Danville, passed

and approved November 9th, 1882, and in consideration of the compliance by the Danville Water Company with the foregoing request and requirements the city of Danville hereby rents from the Danville Water Company the said five additional fire-hydrants, to wit:

No. 108. At the intersection of Vermilion street and Fairchild street.

No. 109. At the intersection of Vermilion street and Townsend avenue.

No. 110. At the intersection of Vermilion street and English street.

112 No. 111. At the intersection of Franklin street and Fairchild street.

No. 112. At the intersection of Franklin street and Townsend avenue.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate of sixty-two dollars and fifty cents ($62.50) per hydrant per annum, beginning with the date when such hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first day of February, May, August and November of each year, subject to termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved June 19th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with
113 the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 20th day of August, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 23rd day of August, A. D. 1890; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the

Danville Water Company to extend its water mains by laying a four-inch water main in Hazel street, from Davis street to Fairchild street, and that the city of Danville hereby requires the said water company to put up at the places hereinafter named three additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance of the Danville Water Company with the foregoing request and requirements the city of Danville hereby rents of the Danville Water Company the said three additional fire-hydrants, to wit:

No. 113. At crossing of Clay and Hazel streets.

No. 114. At crossing of Woodbury and Hazel streets.

No. 115. At crossing of Fairchild and Hazel streets.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate of sixty-two dollars and fifty cents (62.50) per hydrant per annum, beginning with date when said hydrants shall be respectively put up and connected with the water works of the said water company in quarter-yearly installments, on the first days of February,
114 May, August and November of each year, subject to termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved August 20th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 25th day of September, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance to amend section 1 of an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants,' passed and approved August 20th, 1890.

1. Be it ordained by the city council of the city of Danville, That section 1 of an ordinance, entitled 'An ordinance providing for ex-

tending the water mains of the Danville Water Company and renting of it three additional hydrants, passed and approved August 25th, 1890, be, and the same hereby is, amended so as to locate fire-hydrant No. 113 at the crossing of Hazel street and the first
115 alley south of the Cleveland, Cincinnati, Chicago and St. Louis railroad, and the said Danville Water Company is hereby authorized and requested to so locate said fire-hydrant at the above-named point instead of at the crossing of Clay and Hazel streets, as prescribed in said original ordinance.

2. This ordinance to take effect immediately after its passage and approval.

Passed and approved September 25th, A. D. 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

And afterwards, on the third day of September, A. D. 1891, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 18th day of September, A. D. 1891; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and the renting of it three additional hydrants.

1. Be it ordained by the city council of the city of Danville, That the city of Danville requests and hereby requires the Danville Water Company, of Danville, Illinois, to extend its water mains by laying a six-inch water main from a convenient and proper point to the inclosure of the shops of the Chicago and Eastern Illinois Railroad Company at the Danville junction, in Danville, Illinois.

2. That the said city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified three additional fire-hydrants of the kind required by the ordinance of the said city of Danville relative to the water works of the said Danville Water Company, passed and approved on the 9th day of November, 1882, that is to say:

116 No. 116. One hundred and seventy-two feet east of present main and southeast of hydrant No. 101.

No. 117. One hundred and seventy-two feet west of present main and southwest of hydrant No. 101.

No. 118. One hundred feet north and two hundred feet east of hydrant No. 101.

3. That in consideration of the compliance of the said Danville Water Company with the foregoing request and requirements, the said city of Danville hereby rents of and agrees to pay to the said Danville Water Company for the said three additional hydrants during the unexpired term of thirty years from the ninth day of November, 1882, at the rate of sixty-two dollars and fifty cents ($62.50) annually for each hydrant, payable in quarter-

yearly installments, commencing when the said hydrants are respectively in place and ready for use, for the uses and subject to the terms and conditions of the said ordinance, passed and approved on the 9th day of November, 1882.

4. That the said quarter-yearly payments shall be made the first of February, the first of May, the first of August and the first of November in each year, and subject to termination by the purchase of the water works aforesaid by the said city of Danville.

5. That this ordinance shall become binding as a contract upon its passage, approval and publication: provided, however, that the said Danville Water Company shall, within ten days from the publication hereof, file with the city clerk of the said city of Danville, an acceptance in writing of all its terms, conditions and provisions.

Passed September 3rd, 1891.

Approved September 17th, 1891.

JOHN BEARD, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

117 And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 5th day of November, A. D. 1891, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 13th day of November, A. D. 1891: which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the pipe system of the Danville Water Company and renting of it another fire-hydrant.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system to reach the southwest corner of Madison and Mill-streets, and to put up at such corner one additional fire-hydrant of the kind required by the water-works ordinance of the city of Danville, passed and approved November ninth, 1882, and in consideration of the compliance by the said water company with the foregoing request and requirements, the said city of Danville, hereby rents the said hydrant for the uses and subject to the conditions stated in the said ordinance of November ninth, 1882, for and during the unexpired term of thirty years from the ninth day of November, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents ($62.50) per annum, beginning from the date when such hydrant shall be put into successful operation, in quarter-yearly installments, on the first days of February, May, August and November of each year, and
118 terminating upon the expiration of the said term of thirty years from the 9th day of November, 1882, or upon the pur-

chase of the said works and their privileges and property by the said city.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed November fifth, 1891.

Approved November 11th, 1891.

JOHN BEARD, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 20th day of October, A. D. 1892, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it two additional fire-hydrants.

"Be it ordained by the city council of the city of Danville:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main in Logan avenue from Lincoln street to Kimber street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to put at the places here-
119 inafter specified two additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; said two additional fire-hydrants to be located as follows:

"No. 120. At the intersection of Logan avenue with the alley running into Logan avenue about midway between Lincoln and Kimber streets.

"No. 121. At the intersection of Logan avenue and Kimber street.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents the said two hydrants for the uses and subject to the conditions stated in the said ordinance of November ninth, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents ($62.50) per annum for each hydrant, beginning from the date when said hydrants are respectively in place and ready for

use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

"Passed and approved this the 20th day of October, A. D. 1892.

"JOHN BEARD, *Mayor.*

"Attest: JOSEPH SHATZ, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with
120 the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the twenty-first day of June, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for all further hydrants to be hereafter rented than has heretofore existed.

"Be it ordained by the city council of the city of Danville, Ills.:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main as follows:

"On Collett street, from Lyford street to Wabash railroad, thence along Wabash railroad to Fairchild street, thence on Fairchild street to Martin street.

"On East Madison street, from Collett street to a street as yet unnamed, which intersects East Madison about half way between Collett street and Stony creek.

"On Gilbert street, from Madison street to English street.

"On Hazel street, from Fairchild street to English street.

"On English street, from Jackson street to Vermilion street.

"On Vermilion street, from English street to Center street.

"On Sherman street, from Lincoln street to Tincher street.

"On Chandler street, from Lincoln street to Tincher street.
121 "On Kimber street, from Grant street to Sherman street.

"On the street as yet unnamed (which intersects Williams street about half way between Washington avenue and Section street), from Williams to Cherry street.

"On Buchanan street, from Commercial street to South street.

"On Buchanan street, from Wayne street to West street.

"On Jackson street, from Williams street to English street.

"On Walnut street, from Woodbury street to Penn avenue, if extended.

"On Wellington street, from Collett street to Kimball street.

"On Lahr street, from Jackson street to Washington street.

"On Walnut street, from Williams street to Davis street.

"On Commercial street, from Buchanan street to Illinois street.

"SECTION 2. That the city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified thirty-one additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville passed and approved November 9th, 1882; said thirty-one additional fire-hydrants to be located as follows:

No. 122. At the intersection of Martin and Fairchild streets.

No. 123. At the intersection of Kimball and Fairchild streets.

No. 124. At the intersection of East Madison street and the street as yet unnamed, which intersects East Madison street about half way between Collett street and Stony creek.

—. 125. At the intersection of Gilbert and Clay streets.

No. 126. At the intersection of Gilbert and Fairchild streets.

No. 127. At the intersection of Gilbert street and Townsend avenue.

No. 128. At the intersection of Gilbert and English streets.

No. 129. At the intersection of Hazel street and the first alley south of Penn avenue.

122 "No. 130. At the intersection of Hazel and English streets.

"No. 131. At the intersection of Vermilion and Center streets.

"No. 132. At the intersection of Sherman and Tincher streets.

"No. 133. At the intersection of Chandler and Tincher streets.

"No. 134. At the intersection of Sherman and Kimber streets.

"No. 135. At the intersection of Cherry street with the street as yet unnamed, which intersects Williams street about half way between Washington avenue and Section street.

"No. 136. At the intersection of Buchanan and Green streets.

"No. 137. At the intersection of Buchanan and West streets.

"No. 138. At the intersection of East Main street and Bowman avenue.

"—. 139. At the intersection of East Main and Cottage streets.

"No. 140. On Walnut street, about half way between Williams and Madison streets.

"No. 141. On Hazel street, about half way between Williams and Madison streets.

"No. 142. At the intersection of Jackson and Woodbury streets.

"No. 143. At the intersection of Jackson and Davis streets.

"No. 144. At the intersection of Jackson and Sidell streets.

"No. 145. At the intersection of Jackson and English streets.

"No. 146. At the intersection of Walnut street and the first alley south of Townsend avenue.

"No. 147. At the intersection of Walnut street and Penn avenue (if extended).

"No. 148. At the intersection of Walnut and Davis streets.
"No. 149. At the intersection of Kimball and Wellington streets.
"No. 150. At the intersection of Main and Gilbert streets.
"No. 151. At the intersection of Lahr and Washington streets.
"No. 152. At the intersection of Commercial and Illinois streets.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and
123 requirements, the said city of Danville hereby rents the said thirty-one hydrants for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor, at the rate of fifty dollars ($50) per annum for the first nineteen of the said thirty-one hydrants, and at the rate of forty dollars ($40) each per annum for the last twelve of said thirty-one hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. That the rents to be paid to said water company by said city for all further fire-hydrants to be hereafter rented, in excess of the thirty-one herein specified, shall be forty dollars ($40) each per annum.

"SECTION 5. Nothing in this ordinance shall operate to effect in any way any of the provisions of the ordinance heretofore passed by the said city relative to the Danville Water Company, except to the extent of the reduction in the rental of the thirty-one hydrants herein rented and all further hydrants to be hereafter rented, as hereinbefore provided.

"SECTION 6. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance hereof.

"Passed June 21st, A. D. 1894.

"Approved June 28th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

124 And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 26th day of July, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants, and for all further hydrants to be hereafter rented, than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to make the following changes in the extension of water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Jackson street from Sidell street to English street, and on English street from Jackson street to Hazel street, substitute an extension on Walnut street from Penn avenue (if extended) to Center street, and on Center street from Walnut street to Vermilion street.

"For the extension on Gilbert street from Madison street to English street, substitute extension on Gilbert street from Williams street to English street.

125 "SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to change the location of hydrant 145 from the intersection of Jackson and English streets as specified in the ordinance passed June 21st, 1894, to the intersection of Walnut street and Center street.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance thereof.

"Passed July 26th, A. D. 1894.

"Approved August 1st, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the ninth day of August, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants and for all further
126 hydrants to be hereafter rented than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to make the following change in the extension of water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Wellington street from Collett street to Kimball street, substitute an extension of Clarence street from Collett street to Kimball street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to change the location of hydrant No. 149 from the intersection of Kimball and Wellington streets, as specified in the ordinance passed June 21st, 1894, to the intersection of Kimball and Clarence streets.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed August 9th, A. D. 1894.

"Approved August 10th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 18th day of October, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then
127 mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it six additional fire-hydrants.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying mains as follows:

"A 6" main on Robinson street from Williams street to Clay street.

"A 6" main on Douglas avenue from Buchanan street to Illinois street.

"A 6" main on South Vermilion street from South street to Green street (if extended).

"A 6" main on Walnut street from Davis street to Woodbury street, and

"A 4" main on Cottage street from East Main to Grove street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to put up at the places hereinafter specified six additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; said six additional fire-hydrants to be located as follows:

"No. 153. At the intersection of Davis and Robinson streets;

"No. 154. At the intersection of Clay and Robinson streets;

"No. 155. At the intersection of South Vermilion and Green street (if extended);

"No. 156. At the intersection of Douglas avenue and Illinois street;

128 "No. 157. At the intersection of Walnut and Clay streets;

"No. 158. At the intersection of Cottage and Grove streets;

"SECTION 3. That in consideration of the compliance of the said water company with the foregoing requests and requirements, the said city of Danville hereby rents the said six hydrants, for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of forty dollars ($40) per annum for each of the said six hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed and approved October 18, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And plaintiff avers that after the passage of said several ordinances hereinbefore alleged to have been passed respectively on the 9th day of November, 1882, the first day of May, A. D. 1883, and the 7th day of June, A. D. 1883, plaintiff duly built the said water works in

129 all respects as required by the provisions of said several ordinances and erected the said several hydrants and did all

other things necessary and required of it to be done according to the terms and conditions of said several ordinances, and afterwards, to wit, on the 29th day of September, A. D. 1883, the test provided for in said ordinance was duly made, and said city council of said defendant, on said 29th day of September, A. D. 1882, by an order of resolution duly passed and entered of record, accepted said water works as being in full compliance with the terms and conditions of said ordinance.

And plaintiff further avers that from time to time and after the passage of each of — several ordinances so alleged to have been passed since said June 7th, 1883, plaintiff has made said several extensions of its pipes as required by said ordinances respectively and erected and has ever since said erection maintained said hydrants as required by the terms and conditions of said ordinances respectively and has kept the same supplied with water as provided in said several ordinances, and said defendant has had the full, free, and unrestricted use of said hydrants and of said water for the uses and purposes in said several ordinances mentioned, and on, to wit, the first day of May, A. D. 1895, there were erected and in use by said defendant within the corporate limits thereof, to wit, one hundred and fifty-eight (158) of said hydrants, of which number, to wit, one hundred (100) were erected under and by virtue of said ordinances passed November 9th, A. D. 1885, and May first, 1883; to wit, one was erected under and by virtue of said ordinance passed June 7th, 1883; to wit, two were erected under said ordinance passed August 7th, 1884; to wit, four were erected under and by virtue of said ordinance passed April 1st, 1886; to wit, five were erected under & by virtue of said ordinance passed June 19th, A. D. 1890; to wit, three were erected under and by virtue of said ordinances passed August 20th, A. D. 1890, and September 25th, 1890; to wit, three
130 were erected under and by virtue of said ordinance passed September 3rd, 1891; to wit, one was erected under and by virtue of said ordinance passed November 5th, 1891; to wit, two were erected under and by virtue of said ordinance passed October 22nd, A. D. 1892; to wit, thirty-one were erected under and by virtue of the said several ordinances passed respectively June 21st, A. D. 1894, July 26th, 1894, August 9th, 1894, and, to wit, six were erected under and by virtue of said ordinance passed October 18th, A. D. 1894.

And plaintiff further avers that from and including the first day of August, A. D. 1895, until and including the 30th day of October, A. D. 1895, each of said aforementioned hydrants *were* kept supplied with water by plaintiff in all respects as required by the terms and conditions of said several ordinances, and said defendant had during said time the full, free, and unrestricted use of said hydrants and of said water, as in and by the terms of said ordinances as provided, by means whereof said defendant became liable to pay said plaintiff, to wit, the sum of twenty-six hundred and twenty dollars and sixty-two cents ($2,620.62), on, to wit, the first day of November, A. D. 1895, and, being so liable, afterwards, to wit, on the 10th day of

November, A. D. 1895, the county aforesaid undertook and promised to pay the same to the plaintiff when thereunto afterwards requested.

Yet the said defendant, though often requested, has not as yet paid the same or any part thereof, but so to do has refused and still does refuse, to the damage of plaintiff five thousand dollars ($5,000.00), and therefore it brings its suit, etc.

REMY & MANN AND
W. R. LAWRENCE,
Att'ys for Pl'tff.

Filed March 21, 1896.
M. J. BARGER, *Clk.*

131 On the 21st day of March, 1896, there *was* filed in the office of the clerk of said court the pleas of defendant to the plaintiff's amended declaration in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } *ss.:*

In the Circuit Court of said County, to the January Term, A. D. 1896.

DANVILLE WATER CO. }
vs. } Assumpsit.
CITY OF DANVILLE. }

Pleas of the Defendant to the Amended Declaration of the Plaintiff.

And the said defendant, The City of Danville, by W. J. Calhoun and G. F. Rearick, its attorneys, comes and defends the wrong and injury when, etc., at, etc., and as to all of the several said supposed promises and undertakings in the said amended declaration mentioned, except as to the sum of nineteen hundred and thirty dollars ($1,930.00), parcel of the said several sums of money in the said amended declaration mentioned, says that it, the said plaintiff, ought not to have or maintain its aforesaid action thereof against this defendant except as to the said sum of nineteen hundred and thirty dollars ($1,930.00), parcel, etc., as aforesaid, because it says—

"That the said plaintiff at all the times mentioned in its said amended declaration was and now still is engaged in the public business of supplying said city and its inhabitants with water through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of authority granted in and by the ordinance in said amended declaration mentioned.

That while the said plaintiff was so engaged in said business, viz., *that* — 19th day of January, A. D. 1895, and after the passage
132 and approval of each of the ordinances mentioned in the said amended declaration, the city council of the said city of Danville, as it lawfully might do, under and by virtue of an act of the General Assembly of the State of Illinois approved June 6th, 1891, and in force July 1st, A. D. 1891, entitled—

"An act to enable cities, towns, and villages incorporated under

any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or village and the inhabitants thereof," as well as under and by virtue of other full, competent, and complete legal authority, duly passed an ordinance prescribing the maximum rates and charges for the supply of water to be furnished by the plaintiff to the defendant on and after the 1st day of May, A. D. 1895; which said ordinance is in the words and figures following, to wit:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company to the city of Danville.

Whereas after a careful comparison of the rates and charges paid by this city for the supply of water to this city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company, (a corporation organized under the laws of the State of Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable,

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891,
133 and in force July 1st, 1891, entitled: "An act to enable cities, towns and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation, to any such city, town or village and the inhabitants thereof," as well as under and by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois (a municipal corporation organized under and by *the* virtue of the general laws of the State of Illinois), is empowered to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by the said corporation to this city,

And whereas after a full investigation of the matter, it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable,

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by in and through said hydrants, and for which the said city is now paying said water company, the following rentals, viz: Seventy-five dollars ($75.00)

per year per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50), per year, per hydrant for the next twenty-one of said hydrants, fifty dollars ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said
134 Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company the uniform rate and charge of fifty dollars ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished by the said water company for public uses, by, in and through said twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished by, in and through said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz; the rate of charge of forty dollars ($40.00) per hydrant, per annum, and no more.

And for the use of water for flushing the public sanitary sewers of said city, such as now built and connected with the pipes and water mains of said water company, and such as may be hereafter built and so connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville, and said city of Danville shall pay said water company, at the rate of five cents (5c.) pr. one thousand gallons, and no more.

And for the use of water by, in and through the public drinking fountains now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain per
135 annum, and no more.

And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for the like service, which rate said city shall pay to said water company, therefor, and no more.

SECTION 2. That said city of Danville shall continue to take from said Danville Water Company all the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five days (5) *days* after the same is signed by the mayor, or shall go into effect without his signature.

SECTION 3. In case said water company shall desire to make

application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of this city to such suit or cause as may be brought therefor, at the February term, A. D. 1895, of said court.

Passed January 17th, A. D. 1895.

Approved January 19th, A. D. 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

136 Which said ordinance was duly deposited in the office of the city clerk of said city, and was afterwards, on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city, and duly recorded by the city clerk of said city, in all respects as required by law.

And afterwards, within five days after the approval of said ordinance as aforesaid, the said city clerk, on, to wit, the 23rd day of January, A. D. 1895, delivered to the superintendent of said plaintiff a certified copy of said ordinance.

And the defendant further avers that the said plaintiff was duly notified of the passage and approval of said ordinance, and also of the fact that said city for the supply of water taken by the said city for public uses, viz., the supply for which the plaintiff now seeks to recover, and which was furnished in manner and form as alleged in said amended declaration, would pay no other or greater sums than those prescribed in the ordinance aforesaid, viz., the sum of fifty dollars per hydrant per annum for the first one hundred and forty (140) of said hydrants, and forty dollars per hydrant per annum for all other hydrants above that number; which said notice was given long before the said first day of May, A. D. 1895, and long before the said supply of water was furnished, viz., on, to wit, the 23rd day of January, A. D. 1895.

Wherefore the defendant alleges that the rates and charges to be made for the supply of water furnished by the said plaintiff to the said defendant, in manner and form as set forth by said plaintiff in said amended declaration, are the sum of nineteen hundred and thirty dollars ($1,930.00) and no more, and this sum the said defendant is ready and willing to pay.

And this the defendant is ready to verify; wherefore it prays judgment whether said plaintiff ought to have or maintain its
137 aforesaid action thereof against the defendant, except as to the said sum of $1,930.00, parcel, etc.

And for a further plea in this behalf, by leave of the court here first had and obtained, the defendant comes and defends the wrong and injury when, etc., and as to all of the said several supposed premises and undertakings in said amended declaration mentioned, except as to the said sum of nineteen hundred and thirty dollars (1,930.00), parcel of the said several sums of money in said

declaration mentioned, says that it, the said plaintiff, ought not to have or maintain its aforesaid action thereof against the said defendant, except as to the said sum of nineteen hundred and thirty dollars (1,930.00), parcel, etc., as aforesaid, because the defendant says:

That the said plaintiff at all the time- mentioned in its said amended declaration was, and now still is, engaged in the public business of supplying the said city and its inhabitants with water for public and private uses through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of the authority given in the ordinances in said amended declaration mentioned.

That the said several sums of hydrant rental mentioned in said amended declaration for the first one hundred and twenty-one (121) hydrants of the hydrants in said declaration mentioned and the rates and charges fixed in and by the said ordinances for the supply of water to be furnished to the said defendant by, in, and through the same, viz., the supply of water mentioned in said amended declaration as having been supplied in, by, and through the same, which said rates and charges as so fixed were the sum of seventy-five dollars per annum per hydrant for the first one hundred of said hydrants, and the sum of sixty-two and fifty-hun-
138 dredths dollars per hydrant per annum for the next twenty-one of said hydrants, were at the time of the passage of said ordinances and now still — in excess of the reasonable compensation to be made for the supply of water furnished by the said plaintiff to the said defendant during the three months mentioned in said amended declaration, and for the matters and things for which the plaintiff has in said amended declaration declared, and that the said rates and charges for said supply of water, viz., the supply of water furnished in manner and form as alleged in the declaration aforesaid, were, and now —, unjust, unreasonable, and excessive; and that the said ordinance- mentioned in said amended declaration, in so far as they attempted to fix the prices to be paid for the supply of water to be furnished — a long term of years, being voidable at the option of the city council of said city, and the said rates and charges aforesaid therein fixed being unjust, excessive, and unreasonable, the said city council of said city of Danville, after the passage and approval of each and all of the ordinances mentioned in said amended declaration, in view of all the foregoing facts, as it might lawfully do, on, to wit, the 17th day of January, A. D. 1895, passed an ordinance prescribing the maximum rates and charges for the supply of water furnished by the plaintiff to the said defendant for public uses, beginning with the first day of May, A. D. 1895; which said ordinance is in words and figures following, viz:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company to the city of Danville.

Whereas after a careful comparison with the rates and charges paid by this city for the supply of water to the city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company (a corporation organized under the laws of the State of Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable,

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891, and in force July 1st, A. D. 1891, entitled: "An act to enable cities, towns and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town or village and the inhabitants thereof," as well as under and by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois, (a municipal corporation organized under and by virtue of the general laws of the State of Illinois,) is empowered to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by the said corporation to this city,

And whereas after a full investigation of the matter, it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable,

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by, in and through said hydrants, and for which the said city is now paying said water company, the following rentals, viz: seventy-five dollars ($75.00) per year, per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50) per year, per hydrant for the next twenty-one of said hydrants; fifty dollars ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said Danville Water Company shall have and receive from said city of Danville and said city of Danville shall pay said water company the uniform rate and charge of fifty dollars ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished

by the said water company for public uses, by, in and through twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished, in and through said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz: the rate and charge of forty dollars ($40.00) per hydrant, per annum, and no more.

And for the use of water for flushing the public sanitary sewers of said city, such as are now built and connected with the pipes and water mains of said water company, and such as may be hereafter built and so connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville, and said city of Danville shall pay said water company, at the rate of five cents (5c.) per one thousand gallons, and no more.

And for the use of water by, in and through the public
141 drinking fountains now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain, per annum, and no more.

And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for the like service, which rate said city shall pay to said water company, therefor and no more.

SECTION 2. That the said city of Danville shall continue to take from said Danville Water Company all the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five (5) days after the same is signed by the mayor, or shall go into effect without his signature.

SECTION 3. In case said water company shall desire to make application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of the city to such suit or cause as may be brought therefor at the February term, A. D. 1895, of said court.

142 Passed January 17th, A. D. 1895.
Approved January 19th, A. D. 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

Which said ordinance was duly deposited in the office of the city clerk of said city and was afterwards, within the time required by law, viz., on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city and by the city clerk duly recorded in all respects as required by law.

And afterwards, within five days after the approval of said ordinance, as aforesaid, the said city clerk, on, to wit, the 23rd day of January, A. D. 1895, delivered to the superintendent of the said Danville Water Company, in said city of Danville, a duly certified copy of said ordinance.

And the defendant further avers that the said plaintiff had due notice of the passage and approval of said ordinance and of the fact that said city of Danville would pay no other or greater sum or sums for hydrant rental or for the supply of water to be furnished by the said plaintiff to said city for public use, beginning with the first day of May, A. D. 1895, than the sums fixed in and by the said last-mentioned ordinance, viz., the sum of fifty dollars for the first one hundred and forty (140) of said hydrants per hydrant per annum, and the sum of forty dollars per hydrant per annum for the remaining eighteen (18) of said hydrants.

And that the said supply of water furnished by the plaintiff in manner and form as alleged by the plaintiff in its amended declaration was furnished by the said plaintiff with full knowledge of the passage and approval of said ordinance and after due notice of the
143 contents thereof; which said notice was given by the defendant to the plaintiff on, to wit, the 23rd day of January, A. D. 1895.

And that the rates fixed in and by the said last-mentioned ordinance are just and reasonable and are a reasonable compensation for the supply of water furnished by the plaintiff to the defendant in manner and form as alleged by the plaintiff in said amended declaration.

Wherefore the defendant alleges that the said plaintiff is entitled to have and receive from the defendant from the said supply of water so furnished, as aforesaid, no other or greater sum than the sum of nineteen hundred and thirty dollars (1,930.00), being the amount of rental for such fire-hydrants and the water supplied through the same as fixed by said last-mentioned ordinance; and this the defendant is ready to verify. Wherefore it prays judgment whether the plaintiff ought to have or maintain its aforesaid action thereof against this defendant except as to the said sum of nineteen hundred and thirty dollars, parcel, etc.

And for a further plea in this behalf, by leave of the court here first had and obtained, as to the said sum of nineteen hundred and thirty dollars above mentioned, parcel of the said several sums of money in the said amended declaration mentioned, the said defendant says that on, to wit, the 1st day of August, A. D. 1895, on the day the same fell due and before the commencement of this suit, at, to wit, the county aforesaid, the defendant tendered the plaintiff, in full settlement of the matters set forth in the said amended declaration, a city order or warrant for the said sum of nineteen hundred and thirty

dollars, drawn upon the treasurer of the said city, and that said city then and there had funds in the hands of said officer lawfully appropriated for that purpose and sufficient to pay the same in full, to receive which of the said defendant the plaintiff then and there
144 and thence hitherto hath wholly refused; and the said defendant further says that it is ready and willing to deliver the said order to said plaintiff in payment of said claim of the plaintiff sued upon in this case, and it brings the said order into court here to be delivered to the plaintiff, if said plaintiff will accept the same; and this the defendant is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof to recover any more or greater damages than said sum of nineteen hundred and thirty dollars, parcel, etc., in this behalf, etc.

And for a further plea in this behalf, by the leave of the court here first had and obtained, the defendant comes and defends the wrong and injury, when, etc., at, etc., and as to all and singular the supposed premises and undertakings in said amended declaration mentioned says that the said plaintiff ought not to have or maintain its aforesaid action thereof against the defendant, because the defendant says that neither by the ordinances in said amended declaration mentioned nor by any other ordinance or ordinances or in any other manner or by any other means, at any time whatever, either before, at the time, or since the incurring of the indebtedness in said declaration alleged to have been incurred, has any provision been made for the collection of a direct annual tax sufficient to pay such alleged indebtedness, nor has any provision been made for the collection of any tax whatever to pay said alleged indebtedness, nor was any provision whatever made at the time of or previous to the incurring of the alleged indebtedness for the payment thereof.

And this the defendant is ready to verify; wherefore it prays judgment if the plaintiff ought to have or maintain its aforesaid action against the defendant, etc.

145 And for a further plea in this behalf, by the leave of the court here first had and obtained, the defendant comes and defends the wrong and injury when, etc., and as to all and singular at, etc., and as to all and singular the supposed promises and undertakings in said amended declaration mentioned says that the plaintiff ought not to have or maintain its aforesaid action thereof against the defendant, because the defendant says that neither at the time of entering into each of the alleged contracts or any of them, nor at the time of the passage of the several ordinances in said declaration mentioned, or any of them, nor at the time of the making of the several alleged promises in said declaration mentioned or any of them, nor at the time before or at the incurring said alleged indebtedness or any part thereof, had there been or was there any appropriation previously made concerning the expense thereof or had been or was any appropriation or provision whatever made for the payment of the supposed indebtedness aforesaid or any part thereof.

And this the defendant is ready to verify; wherefore it prays judg-

ment if the plaintiff ought to have or maintain its aforesaid action against the defendant, etc.

W. J. CALHOUN,
Atty for Def't.
G. F. REARICK, *City Atty.*

Filed Mar. 21, 1896.
M. J. BARGER, *Clk.*

On the 21st day of March, 1896, there was filed in the office of the clerk of said court the plaintiff's demurrer to the said pleas of defendant in the words and figures following, to wit:

146 WATER COMPANY
vs.
CITY.

Gen'l Demurrer to Pleas to Amended Decl.

In the Circuit Court, January Term, 1896.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE, ILLINOIS. } Gen'l Demur. to Pleas.

And now comes the plaintiff and demurs to each and all of the defendant's pleas herein to the amended declaration, because it says that they nor neither of them constitute a defense to the plaintiff's amended declaration, etc.

W. R. LAWRENCE, WITH
REMY & MANN,
Plaintiff's Attorneys.

Filed March 21st, 1896.
M. J. BARGER, *Clerk.*

On the 21st day of March, 1896, the following proceedings were had and entered of record in said court, to wit:

147 January Term, 1896, 32 Day.

SATURDAY MORNING, *March* 21, 1896.

THE DANVILLE WATER CO.
vs.
THE CITY OF DANVILLE. } 11354. Assumpsit.

Now come said parties, by their respective attorneys, and on motion of plaintiff it has leave to file a new declaration herein, and plaintiff files its demurrer to the defendant's pleas herein, and said defendant moves the court to have demurrer carried back to the declaration.

SATURDAY MORNING, *April 11th*, 1896.

It is ordered that court do not adjourn until court in due course of law.

And afterward, at the May term of said court, the following proceedings were had and entered of record:

May Term, 1896, 13th Day.

MONDAY MORNING, *June 1st*, 1896.

THE DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } 11354. Assumpsit.

Now come the parties, by their respective attorneys, and the court, having duly considered said plaintiff's demurrer to defendant's pleas herein filed and being fully advised in the premises, sustains said demurrer; to which ruling of the court defendant excepts and elects to stand by its said pleas. And it appearing to the court that said plaintiff has sustained damages by reason of the non-performance of certain promises in its declaration mentioned, it is therefore ordered that said plaintiff have judgment against said defendant for its said damages, now here assessed by the court at the sum of
148 ($2,697.00) twenty-six hundred and ninety-seven dollars. It is therefore considered and adjudged by the court that said plaintiff have and recover of and from said defendant, The City of Danville, the said sum of ($2,697.00) twenty-six hundred and ninety-seven dollars, and also its costs in this behalf expended, and that no execution issue; to which judgement and ruling of the court said defendant excepts and prays an appeal of this cause to the appellate court, which is granted upon said defendant filing its bill of exceptions in thirty days from this date.

SATURDAY MORNING, *August* 29, 1896.

Court convened, pursuant to adjournment, at 9 o'clock a. m.

It is ordered that court do now adjourn until court in due course of law.

On the 11th day of September, 1899, the following paper, with the sheriff's return thereon, was filed in the office of said clerk in the words and figures following:

WATER COMPANY
vs.
CITY.

Notice of Reinstatement, etc.

Sheriff's fees.

Serving	.65
Copy	.10
Return	.10
2 miles	.10
	.95

STATE OF ILLINOIS, } ss:
Vermilion County, }

I have duly served the within notice upon the within-named City of Danville by reading the same to Martin B. Bailey, its mayor,
149 and at the same time delivering to him a true copy thereof the 9th day of September, A. D. 1899.

JAMES SLOAN, *Sheriff.*
By JAMES SLOAN, JR., *Deputy.*

In the Circuit Court of Vermilion County, State of Illinois, of the October Term, 1899.

DANVILLE WATER COMPANY } Notice of Reinstatement of Cause, etc.
vs.
CITY OF DANVILLE. }

Notice is hereby given that said Danville Water Company has filed in the office of the clerk of said court the remanding order of the supreme court in the case of said cit*ie*'s writ of error in said cause, and that said cause will be reinstated on the docket for trial at said term of court.

W. R. LAWRENCE, WITH
REMY & MANN,
Att'ys for Water Company.

Filed September 11th, 1899.
M. J. BARGER, *Clerk.*

On the 5th day of September, 1899, there was filed in the office of the clerk of said court the remanding order of the supreme court in the words and figures following, to wit:

150 STATE OF ILLINOIS, } ss:
Supreme Court, }

At a supreme court begun and held at Springfield on the first Tuesday in the month of April, in the year of our Lord one thousand eight hundred and ninety-nine, the same being the 4th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Carroll C. Boggs, justice; James H. Cartwright, justice; Jesse J. Phillips, justice.

And afterwards, to wit, on the 17th day of June, in the year of our Lord one thousand eight hundred and ninety-nine, an order was made by said court in words and figures following, to wit:

THE CITY OF DANVILLE
vs.
THE DANVILLE WATER COMPANY. } Error to Vermilion.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the circuit court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court for such other and further proceedings as to
151 law and justice shall appertain, and the motion heretofore entered to affirm said judgment is denied.

And it is further considered by the court that the said plaintiff in error recover of and from the said defendant in error costs by it in this behalf expended, and that it have execution therefor.

I, A. D. Cadwallader, clerk of the said supreme court, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Springfield, this 29th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

A. D. CADWALLADER,
Clerk of Supreme Court. [L. S.]

Filed September 5th, 1899.
M. J. BARGER, *Clerk.*

152 At the October term, 1899, of said court the following proceedings were had and entered of record:

October Term, 1899, October 2nd, 1899.

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } Assumpsit. No. 11354.

Now come the said parties, by their respective attorneys, and this cause is reinstated by the court; and the said defendant withdraws the third plea herein. Said plaintiff demurs to the first, second, fourth, and fifth special pleas herein, which demurrer is by the court sustained as to the fourth and fifth pleas, and defendant excepts thereto. By the order of the supreme court the demurrer is overruled as to the first and second pleas, and said plaintiff excepts; and said plaintiff elects to stand by its demurrer as to said first and second pleas; whereupon the court renders judgment. It is ordered and adjudged by the court that said plaintiff have and recover of and

from said defendant the sum of one thousand nine hundred and thirty dollars ($1,930.00) and costs of suit, and said defendant excepts to the rendering of said judgment. Said plaintiff prays an appeal of this cause to the supreme court; which appeal is by the court granted upon said plaintiff giving an appeal bond, conditioned according to law, with good security, to be approved by the clerk of this court, in the sum of two hundred dollars, said bond to be filed in thirty days.

On the 14th day of October, 1899, there was filed in the office of the clerk of said court the appeal bond of appellant, with the clerk's approval thereon endorsed, in the words and figures following, to wit:

153 *Appeal Bond from Circuit to Supreme Court.*

Danville Printing Company, printers.

Know all men by these presents that we, The Danville Water Company (a body politic and corporate), as principal, and G. B. Sidelinger, as surety, of the county of Vermilion and State of Illinois, are held and firmly bound unto the City of Danville, Illinois, in the penal sum of two hundred, 200, dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by the- presents.

Sealed with our seals and dated, at Danville, this — day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

The condition of the above obligation is such that whereas the said The Danville Water Company —, the second day of October, one thousand eight hundred and ninety-nine, at a term of court then being holden within and for the fifth judicial circuit, in the county of Vermilion and State of Illinois, obtain- a judgment against the above-bounden The City of Danville for the sum of nineteen hundred and thirty dollars and — cents and costs of suit in an action therein pending, wherein it claimed and demanded twenty-six hundred and twenty & $\frac{62}{100}$ dollars, from which judgment the said The Danville Water Company has prayed for and obtained an appeal to the supreme court of said State:

Now, if the said The Danville Water Company shall duly prosecute said appeal and shall, moreover, pay the amount of the costs, interest, and damages, rendered and to be rendered, against it, the said The Danville Water Company, in case said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

[L. S.] DANVILLE WATER CO., [SEAL.]
By GEO. J. LONG, *Pres't.* [SEAL.]
G. B. SIDELINGER. [SEAL.]

Attest: W. J. McGONIGAL, *Sec'y.* [SEAL.]

154 October Term, 1899.

DECEMBER 30TH, 1899, SATURDAY MORNING.

Court convened, pursuant to adjournment, at 9 o'clock a. m., all the officers of said court present, as hereinbefore set forth; whereupon certain proceedings were had and entered of record in said court in words and figures following, to wit:

It is ordered that court adjourn until court in due course of law.

I, M. J. Barger, clerk of the circuit court of Vermilion county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and of the appeal bond in a certain cause lately pending in said court, on the law side thereof, wherein The Danville Water Company was plaintiff and The City of Danville was defendant, being No. 11354.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Danville, this 10th day of January, A. D. 1900.

[SEAL.] M. J. BARGER, *Clerk*.

155 DANVILLE WATER COMPANY, Appellant, } Appellant's Assignment of Errors.
vs.
CITY OF DANVILLE, Appellee. }

And now comes said appellant, by Remy and Mann and W. R. Lawrence, its attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

I. The circuit court erred in overruling the demurrer of appellant to the first plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—in said plea mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

II. The circuit court erred in overruling appellant's demurrer to the first original plea to the amended declaration, because the ordinance of defendant passed on the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois, approved June 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by appellant, and by reason whereof is repugnant to section 10, article 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of a contract.

156

III. The circuit court erred in overruling appellant's demurrer to defendant's first original plea to the amended declaration for the reason that the ordinance of appellee set forth in said plea and passed January 19, 1895, under the supposed authority of said act of the General Assembly of the State of Illinois approved June 6, 1891, in said first plea set forth, is in violation of section 1 of the 14th

amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny any person within its jurisdiction the equal protection of the laws.

IV. The circuit court erred in overruling the demurrer of appellant to the first original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned, is in violation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Danville to deprive, appellant of its property without due process of law.

V. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6th, 1891—in said plea mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

VI. The circuit court erred in overruling the demurrer of
157 appellant to the second original plea to the amended declaration, because the ordinance of defendant passed on the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by appellant, and by reason thereof is repugnant to section 10, article one, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of a contract.

VII. The circuit court erred in overruling appellant's demurrer to defendant's second original plea to the amended declaration for the reason that the ordinance of appellee set forth in said plea and passed January 19, 1895, under the supposed authority of said act of the General Assemby of the State of Illinois approved June 6th, 1891, in said plea set forth, is in violation of section one of the 14th amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny any person within its jurisdiction the equal protection of the laws.

VIII. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned is in violation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Dan-

ville to deprive the appellant of its property without due process of law.

REMY & MANN,
W. R. LAWRENCE,
Attorneys for Appellant.

158 In the Supreme Court of the State of Illinois, Central Grand Division, February Term, A. D. 1900.

DANVILLE WATER CO., Appellant, vs. CITY OF DANVILLE, Appellee. } Appeal from the Circuit Court of Vermilion County.

Cross-errors Assigned by Appellee.

And now comes The City of Danville, appellee, by John H. Lewman, city attorney, and Geo. F. Rearick, its attorneys, and shows the court here that there is manifest error in the record herein in this, that is to say:

1. It was error to sustain a demurrer to the fourth plea filed by the defendant.
2. It was error to sustain a demurrer to the fifth plea filed by the defendant.
3. It was error to render judgment against the said defendant for the sum of nineteen hundred and thirty dollars or any other sum.
4. It was error not to enter judgment for the defendant.
5. The judgment of the circuit court should have been against the plaintiff for costs of suit.

Wherefore, for the reasons above set forth and which the record will sustain, the judgment of said circuit court ought to be reversed.

JOHN H. LEWMAN, *City Att'y,*
GEO. F. REARICK,
Att'ys for Appellee.

159 And be it further remembered that afterwards, to wit, on the 9th day of February, A. D. 1900, the following proceedings were had in said cause:

DANVILLE WATER COMPANY vs. THE CITY OF DANVILLE. } Error to Vermilion.

And now, on this day, comes the defendant in error in this cause, by attorney, and moves the court to consolidate this cause with cause No. 1291 on the docket for this term; and the court, not being sufficiently advised of and concerning the premises, takes said motion under advisement.

And be it further remembered that afterwards, to wit, on the 15th day of February, A. D. 1900, an order was made by the court in said cause in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } Error to Vermilion.

And now, on this day, come again the parties herein, by attorney, and, the court being now sufficiently advised of and concerning the premises, the motion of the defendant in error to consolidate this cause with cause No. 1291 on the docket for this term is allowed, and the two causes are consolidated accordingly.

And be it further remembered that afterwards, to wit, on the 20th day of February, A. D. 1900, an order was made in said cause in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } Error to Vermilion.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or order of the court for this term, and this cause coming now on to be heard, the plaintiff in error having entered motion to reverse the judgment
160 and remand the cause, and for costs, and the defendant in error having entered motion to affirm the judgment herein, and for costs and for *procedendo*, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that afterwards, to wit, on the 21st day of June, A. D. 1900, an opinion was filed in said cause in the words and figures following, to wit:

Docket No. 1291, 1292, Agenda 61, Central Div., Feb., 1900.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } Appeal from Vermilion.

Per curiam.

This case has practically been before us on two former occasions, the parties then being reversed.

Counsel for appellant concedes the judgment from which this appeal is taken is in exact conformity with the judgments and opinions in the former cases, and that no new question or matter has intervened since the former hearings here. Manifestly the only purpose of this appeal is to obtain a final judgment in this court to enable appellant to take a further appeal, if it should desire to do so.

Adhearing as we do to the reasoning and conclusions announced in Danville Water Co. *v.* The City of Danville, 78 Ill., 229, and Same *v.* Same, 180 Ill., 235, on the authority of these cases this judgment will be affirmed.

Judgment affirmed.

161 And be it further remembered that afterwards, to wit, on the 21st day of June, A. D. 1900, an order was made by said court in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } No. 1291, 1292. Error to Vermilion.

On this day come the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that the record is no error, therefore it is considered by the court that the motions heretofore made to reverse the judgment and remand said cause for a new trial be, and the same are, denied, and the motion heretofore made to affirm the judgment herein is allowed; and it is therefore ordered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error, and that motion for *procedendo* be allowed; and it is further considered by the court that the defendant in error recover of and from the plaintiff in error costs by it in this behalf expended, and that it have execution therefor.

And be it further remembered that afterwards, to wit, on the 18th day of July, A. D. 1900, there was filed in the office of said clerk of the supreme court an appeal bond, which is in the words and figures following, to wit:

162 In the Supreme Court of Illinois.

DANVILLE WATER COMPANY, Plaintiff in Error,
vs.
THE CITY OF DANVILLE, Defendant in Error.

Know all men by these presents that we, The Danville Water Company, a corporation organized and existing under the laws of the State of Illinois, as principal, and The Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto The City of Danville, its successors and assigns, in the sum of five hundred ($500.00) dollars; for the payment of which, well and truly to be made, we, The Danville Water Company, for itself, its successors, and assigns, and the said Fidelity & Deposit Company of Maryland,

its successors and assigns, bind ourselves, jointly and severally, firmly by these presents.

Witness our hands and seals this July 9th, 1900.

The condition of this obligation is such that whereas the said Danville Water Company instituted a certain action against the City of Danville in the circuit court of Vermilion county, claiming a certain sum of money, and a large part of the relief claimed by the Danville Water Company was denied, and subsequently a writ of error was taken from the said judgment to the supreme court of Illinois, which affirmed the same; and whereas the said Danville Water Company has sued out a writ of error from the Supreme Court of the United States to reverse the said order and judgment of the supreme court of Illinois:

Now, therefore, if the above-bounden Danville Water Company shall prosecute said writ of error to effect and answer all costs if it fail to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

163 DANVILLE WATER COMPANY,
[SEAL.] By GEO. J. LONG, *Pres't.*
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
[SEAL.] By BLEWETT LEE, *Resident Director.*

Attest: W. J. McGONIGALE, *Sec'y.*

Z. L. TIDBALL,
General Manager.

STATE OF KENTUCKY, } *set:*
Jefferson County, }

This day personally appeared before me Geo. J. Long, known to me to be the person who signed the foregoing, and acknowledged the same as the act and deed of the Danville Water Company; and also appeared W. J. McGonigale, known to me to be the person who attested the same, and acknowledged that he so attested it as secretary of the Danville Water Company and affixed its seal as such.

Witness my hand and seal this July 10th, 1900.

WM. SACKETT,
[SEAL.] *Notary Public, Jefferson Co., Ky.*

Commission expires next session of the senate.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Arthur C. Arnold, a notary public in and for said county and State, do hereby certify that Blewett Lee, resident director, and Z. L. Tidball, general manager, of the Fidelity and Deposit Company of Maryland, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the foregoing instrument as *their free and voluntary as* resident director and general manager respectively of the Fidelity and Deposit Company of Mary-

land, and as the free and voluntary act of the Fidelity and Deposit Company of Maryland, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of
164 July, A. D. 1900.

ARTHUR C. ARNOLD,
Notary Public.

[SEAL.]

Commission expires May 4th, 1901.

The above and foregoing bond is approved this 13th day of July, 1900.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of Illinois.

Indorsements: Supreme court of Illinois. Danville Water Co. *vs.* City of Danville. Bond. Filed Jul- 18, 1900. A. D. Cadwallader, clerk supreme court.

165 Supreme Court of the United States.

DANVILLE WATER COMPANY, Plaintiff in Error,
vs.
CITY OF DANVILLE, Defendant in Error.

In error to the supreme court of the State of Illinois.

Now comes the plaintiff in error, The Danville Water Company, by Alex. P. Humphrey, its attorneys, and says that in the record and proceedings in this cause in the supreme court of the State of Illinois there is manifest error, in this, to wit:

1. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, wherein the said circuit court overruled the demurrer of the plaintiff in error to the first plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—*and* said plea mentioned and therein relied upon as a defense, is repugnant to section 10 of article 1 of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

2. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, wherein said circuit court overruled the demurrer of the plaintiff in error to the first original plea of the defendant in error to the amended declaration, because the ordinance of the defendant in error passed on the 19th day of January, 1895, under and by
166 virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June 6, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff in error and the defendant in error created by the various ordinances in said declaration mentioned and the acceptance thereof by plaintiff in error, and by reason thereof is

repugnant to section 10, article 1, of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of a contract.

3. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, wherein the said court overruled the demurrer of the plaintiff in error to the first original plea of defendant in error to the amended declaration, for the reason that the ordinance of the defendant in error set forth in said plea and passed January 19, 1895, under the supposed authority in said act of the General Assembly of the State of Illinois approved June 6, 1891, in said first plea set forth, is in violation of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of its laws.

4. The said supreme court of Illinois erred in that it affirmed the judgment of the circuit court of Vermilion county, Illinois, wherein the demurrer of the plaintiff in error was overruled to the first original plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6, 1891, in the said plea mentioned, is in violation of the laws and Constitution and, among other
167 things, is in violation of the fourteenth amendment of the Constitution of the United States, in that it attempts to deprive and to authorize the defendant in error to deprive the plaintiff in error of its property without due process of law.

5. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, in overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—in said plea mentioned and therein relied on as the defense, is repugnant to section 10 of article 1 of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

6. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, in *and* overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the ordinance of the defendant in error passed on the 19th day of January, 1895, under an- by virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June 6, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between the plaintiff in error and defendant in error created by the various ordinances in said declaration mentioned and the acceptance thereof by plaintiff in error, and by reason thereof is repugnant to section 10 of article 1 of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of a contract.

168 7. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois,

in overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the ordinance of appellee set forth in said plea and passed January 19, 1895, under the supposed authority of said act of the General Assembly of the State of Illinois approved June 6, 1891, in said second plea set forth, is in violation of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

8. The said supreme court of Illinois erred in that it affirmed the judgment of the circuit court of Vermilion county, Illinois, in overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6, 1891, in said plea mentioned, is in violation of the Constitution and laws of the United States and, among other things, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive and to authorize the defendant in error to deprive the plaintiff in error of its property without due process of law.

9. The said supreme court of Illinois erred in deciding that the authority exercised under the State of Illinois by the city of Danville in passing the certain ordinances set forth in its first and second original pleas was valid, and in rendering its said judgment in said cause upheld the validity of said authority; which said au-
169 thority and the exercise thereof were repugnant to the Constitution of the United States.

10. The said supreme court of Illinois erred in deciding that the rights and privileges conferred upon the plaintiff in error by the ordinances set forth by it were not vested rights, and erroneously entered judgment against said rights and privileges of the plaintiff in error, which are especially set up and claimed under the Constitution of the United States.

11. The said supreme court of Illinois erred in deciding that no contract to pay the rates for water which are charged by the plaintiff in error to the defendant in error existed between said plaintiff in error and said defendant in error, and that the plaintiff in error, by virtue of the obligation of the water company and the acceptance thereof in said record appearing, and which decision of said court impairs the obligation of the contract, in violation of the provisions of the Consitution of the United States.

Wherefore the said plaintiff in error, The Danville Water Company, prays that the judgment of the said supreme court of Illinois may be reversed by this honorable court.

July 9, 1900.

ALEX. P. HUMPHREY, *For Pl'ff.*

170 UNITED STATES OF AMERICA, *ss:*

To The City of Danville, Illinois, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, thirty (30) days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Danville Water Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Carroll C. Boggs, chief justice of the supreme court of the State of Illinois, this July 13th, 1900.

CARROLL C. BOGGS,
Chief Justice Supreme Court of Illinois.

Service of the above and foregoing assignment of errors and citation acknowledged and copies of same received at Danville, Illinois, this 17 day of July, A. D. 1900.

M. B. BAILEY,
Mayor City of Danville, Ill.

171 I, A. D. Cadwallader, clerk of the supreme court of the State of Illinois, duly elected and qualified, in and for what was formerly known as the central grand division, do hereby certify that the above and foregoing is a true and correct copy of the original records in two certain causes, wherein The Danville Water Company was the plaintiff in error and The City of Danville was the defendant in error, which causes were numbered 1291 and 1292 respectively on the docket of said supreme court of the February term, A. D. 1900, and were consolidated by leave of the court, and also a true and correct copy of all the proceedings had and of record in the said supreme court, and also a true and correct copy of the appeal bond filed in said consolidated cause, also the original citation, with acknowledgment of service thereof, as the same appears from the records and files in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court, at Springfield, Illinois, this 31st day July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk Supreme Court.

172 UNITED STATES OF AMERICA, *sct:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the records and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of Illinois between The Danville Water Company, a corporation, as plaintiff in error, and The City of Danville, as defendant in error, a manifest error hath occurred, to the great damage of the said water company, as by its complaint is alleged, and wherein it is claimed its certain rights and privileges under the Constitution of the United States were decided against by your said court, and that your said court decided in favor of a certain authority exercised under the State of Illinois, and which said authority and the exercise thereof were regugnant to the Constitution of the United States, we, being willing that said errors, if any hath been, shall be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writing, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that alleged error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
173 of the United States, this June 27, A. D. 1900.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of Illinois.

[Endorsed:] Filed Jul- 18, 1900. A. D. Cadwallader, clerk supreme court.

174 In obedience to the above and foregoing writ of error I herewith return a full, true, and correct copy of the original records in said cause, together with a full, true, and correct copy of all the proceedings had and of record in said cause in the supreme court of the State of Illinois; and I hereby certify that a copy of said writ of error is now on file in my office, in the city of Springfield, county of Sangamon and State of Illinois, the same having

been filed by the plaintiff in error on the 18th day of July, A. D. 1900, for the defendant in error and so indorsed.

Witness my hand and the seal of the supreme court of the State of Illinois this 31st day of July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk Supreme Court.

Endorsed on cover: File No., 17,858. Illinois supreme court. Term No., 373. The Danville Water Company, plaintiff in error, *vs.* The City of Danville. Filed August 3d, 1900.

No. 373.

NOV 12 1900

JAMES H. McKENNEY, Clerk.

Motion for Advancement.

Filed Nov. 12, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

[redacted] WATER COMPANY, Plaintiff in Error,

vs.

CITY OF [redacted]LE, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION TO ADVANCE.

[redacted]

[redacted]

In the Supreme Court of the United States.

DANVILLE WATER COMPANY, ... *Plaintiff in Error*,

vs.

THE CITY OF DANVILLE, ... *Defendant in Error.*

To the Defendant in Error:

Notice is hereby given to the City of Danville, defendant in error, that on Monday, November 12, 1900, the Danville Water Company, plaintiff in error, will make a motion in the Supreme Court of the United States, in Washington, D. C., at the opening of said Court on said date, to advance to such early day as the Court may think proper said case for argument orally and submission thereon, or submission on briefs, as the Court deems proper and advisable.

A. P. HUMPHREY, AND
BINGHAM & DAVIES,
Attorneys for Plaintiff in Error.

DANVILLE, ILL., Nov. 7, 1900.

I have this day received a copy of the above notice.

M. B. BAILEY,
Mayor of said City of Danville.
J. H. LEWMAN,
Attorney of said City of Danville.

No._____

Supreme Court of the United States.

OCTOBER TERM, 1900.

DANVILLE WATER COMPANY, . . . *Plaintiff in Error,*

vs.

CITY OF DANVILLE, ... *Defendant in Error.*

MOTION TO ADVANCE.

The Danville Water Company, plaintiff in error, claims that it established its plant in or near the city of Danville, Ills., under an ordinance of the City of Danville by which a right was given to it to use the streets of the city for laying mains and pipes, and by which it came under obligation to furnish water to the City and its citizens, and the City came under obligation to pay a certain price for each fire hydrant.

Some years after the passage of this ordinance and the completion of the plant, the City of Danville undertook, by ordinance, to reduce the rates for its use of such fire hydrants. The plaintiff in error, refusing to accede to the terms of this ordinance, and the City declining to pay anything, the plaintiff in error brought suit against the City of Danville for two quarterly payments.

The City interposed the new ordinance as a partial defense. Demurrers were sustained by the Circuit Court of Vermilion County, in which the suit was pending, to these pleas. The case was taken by the City of Danville to the

Supreme Court of Illinois, where it was reversed. That Court held that the City of Danville had the right to pass the ordinance reducing the rates for water, and that there had been no violation of a contract in so doing, nor any taking of private property for public use.

The case is reported under the name of the City of Danville vs. Danville Water Company, 178 Ill., 299, and 180 Ill., 235.

The judgment of the Circuit Court was reversed and the case remanded to the Circuit Court for proceedings in conformity to the opinion.

Upon the case being remanded and re-docketed, the Circuit Court, in obedience to this mandate, overruled the demurrers to the pleas, and the plaintiff in error had judgment only for the reduced rate. It thereupon prosecuted an appeal to the Supreme Court of Illinois, and the judgment was affirmed. It at once took a writ of error to this Court. The case was docketed for this term, but will not be reached on the calendar for some time.

In the meantime there has been argued in this Court, on October 31, case No. 56, Rogers Park Water Company vs. Fergus, and on October 29, 1900, case No. 348, Freeport Water Company vs. City of Freeport, was advanced for submission with No. 56, with leave to counsel for defendant in error to file brief on or before November 20th.

Counsel for the Danville Water Company are anxious to be heard upon the questions that will be presented in the consideration of these cases.

The case of the Danville Water Company differs from No. 56—the Rogers Park case—in that No. 56 involves the question whether there was a binding contract in favor of the Water Company to charge the rates prescribed in the original ordinance to private consumers, there being no question, as

we understand it, in that case as to whether the municipality had the right to subsequently change the amount to be paid by the municipality itself for water furnished to it.

The case of the Danville Water Company differs from that of the Freeport Water Company, No. 348, in that the grant to the Freeport Water Company was exclusive in its character. And we understand that it is contended by the defendant in error in that case that this renders the contract void as beyond the power of the municipality. The grant in the Danville Water Company case is not exclusive and there is no such question.

Not having heard the argument in the Rogers Park case we are unable to say whether counsel presented the question as to the right of the Water Company where the rates agreed to be paid by the municipality were in controversy, and assume that the argument was addressed to the other question—the only one in that case—as to whether there was a right to change the rates payable by private consumers.

No. 348 was not argued, but, as above stated, was submitted on brief.

It is respectfully submitted that the question in the case of the Danville Water Company as to the inviolability of its contract with the City of Danville, by subsequent municipal regulation, is of such importance that it deserves an oral discussion at the bar of this Court.

Counsel have been in no way wanting in diligence in bringing the case here, the delay since its decision by the Supreme Court of Illinois, as reported in the 178 and 180 of Illinois Reports, being rendered necessary by the fact that no final order could be then entered, but the case had to go back again to the Circuit Court and again come to the Supreme Court of Illinois. As soon as a final order was made in the Supreme Court of Illinois the case was brought here.

Counsel are anxious to present these matters, as they are of supreme importance to the plaintiff in error, and as it is believed that they can be better discussed at an oral hearing than by printed brief.

The Danville Water Company would therefore respectfully ask the Court to advance this cause to some date in the near future, when it may be argued orally, or, if the Court should not be inclined to grant this motion, then it would ask the Court to advance the cause to be submitted with No. 56 and No. 348, with such time as the Court may find convenient to allow both sides to present written argument.

Respectfully submitted,

WILLIAM W. DAVIES,

ALEX. POPE HUMPHREY,

For Plaintiff in Error.

No. 373.

NOV 26 1900
JAMES H. McKENNEY,
Clerk.

Brf. of Humphrey & Davies for P.

No. 373.

Supreme Court of the United States,

OCTOBER TERM, 1900.

Filed Nov. 26, 1900.

DANVILLE WATER COMPANY,

VERSUS

CITY OF DANVILLE.

Error to Supreme Court of Illinois.

BRIEF FOR PLAINTIFF IN ERROR.

ALEXANDER POPE HUMPHREY,
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Of Counsel.

JOHN P. MORTON & COMPANY, LOUISVILLE, KY.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900.

DANVILLE WATER COMPANY, *Plaintiff in Error,*

No. 373. *VERSUS*

CITY OF DANVILLE, . . . *Defendant in Error.*

Error to Supreme Court of Illinois.

BRIEF FOR PLAINTIFF IN ERROR.

May it please the Court:

On September 16, 1895, the Danville Water Company brought suit in the Circuit Court of Vermilion County, Illinois, against the City of Danville for the recovery of certain fire-hydrant rentals contracted for between the parties by an ordinance of the City of Danville passed and approved November 9, 1882, and one of May 1, 1883, and other minor and consistent ordinances mentioned hereafter. As a defense the City of Danville interposed pleas setting up rates fixed by virtue of an ordinance of the City of Danville of January 19, 1895, abrogating and setting aside the rates established by the ordinances of 1882 and 1883, and those passed subsequently to them and consistently with them. To such pleas the Danville Water Company filed demurrers, which were sustained. Later, on January 10, 1896, an exactly similar action was filed in the same court between the same parties for the same amount of indebtedness under the same ordinances and cause of action, with only the difference that the rentals sued for were for a later quarter of the year.

To this last action the City of Danville filed the same pleas

and also certain other pleas. To all these pleas demurrers were filed and sustained. From these judgments appeals were prosecuted to the Supreme Court of Illinois. That court held that the judgments were erroneous in sustaining demurrers to the first two pleas, that the third had been abandoned, and that the court below was right in its decision on pleas four and five. On return of the case, the Circuit Court followed the mandate of the Supreme Court and overruled the demurrers to the first two pleas and sustained demurrers to the others. Appeals were prosecuted from these judgments and they were affirmed, the two causes having been in this last hearing consolidated by the Supreme Court of Illinois. (R. 104.) A writ of error having been prosecuted to this judgment, the question before this court is the validity of the judgment of the Supreme Court of Illinois.

STATEMENT.

This case arises upon questions based upon the action of the Circuit Court of Vermilion County, Ill., in following the judgment of the Supreme Court of Illinois in overruling demurrers filed by the Danville Water Company to the sufficiency of the pleas of the City of Danville. From the judgment of the Supreme Court of Illinois, in sustaining the action of the Circuit Court of Vermilion County, this plaintiff in error has taken a writ of error to this court.

On November 9, 1882, the Danville Water Company was constituted a corporation under the laws of Illinois, with the characteristics and powers of a water company to contract and be contracted with, and to supply the City of Danville, Ill., and its inhabitants, with water for municipal and private uses. On the same day, November 9, 1882, the council of the City of Danville duly and regularly passed, and its mayor duly and regularly approved, an ordinance entitled, "An ordinance providing for a supply of water to the City of Danville and its inhabitants, authorizing the Danville Water Company to construct and main-

tain water-works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works."

This ordinance is set out in full in the printed Transcript. (R. 5.) Section 14 of this ordinance terms the ordinance "*a contract*" with the Danville Water Company upon the acceptance of the ordinance, in writing, by the Danville Water Company, within ten days from the passage and publication of the ordinance. The written acceptance of the ordinance and its terms and provisions was regularly made in due time and form by the Danville Water Company. By Section 8 of this ordinance (R. 9) the City of Danville rented of the Danville Water Company for the term of thirty (30) years, one hundred (100) fire-hydrants, with proper water service therefrom, at the annual rental of seventy-five dollars ($75.00) per hydrant. It was further agreed in the same section of the same ordinance (R. 10) that the City of Danville should pay sixty-two dollars and fifty cents ($62.50) per hydrant yearly during the unexpired portion of the thirty years, for forty (40) additional fire-hydrants, which the Danville Water Company might put in successful operation, and for all fire hydrants in excess of one hundred and forty (140), under similar provisions, the annual rental of fifty dollars ($50.00) per hydrant.

These rentals were, by the terms of the ordinance, to be paid in quarterly installments. Subsequently, and on various dates (R 4-31) ordinances, in number fifteen (15), were passed, published and duly approved on the part of the City of Danville touching matters of construction and detail not material in the discussions of the issues in this case. In two of these ordinances, the ordinances of June 28, 1894, and October 18, 1894 (R. 27, 31), the fire-hydrant rate, for *certain hydrants*, was reduced to $40.00 per annum per hydrant. In these last two ordinances there were provisions to the effect that they should be part of the binding contract between the City of Danville and the Danville Water Company when they should be accepted in writing

within a given time by the Danville Water Company. Such written acceptance was made in proper form and time.

This rate of $40.00 per hydrant was a special arrangement, and was consented to in writing and accepted by the Danville Water Company. The Danville Water Company erected and put in satisfactory operation one hundred and fifty-eight (158) fire-hydrants, under the terms and provisions of the original ordinances of November 9, 1882, and May 1, 1883, and those above mentioned as subsequently enacted, from time to time, and accepted in writing properly by the Danville Water Company. For the fire-hydrant rentals established and recognized in the original ordinances of November 9, 1882, and May 1, 1883, and in those ordinances following, the Danville Water Company brought suit in the Vermilion County Circuit Court against the City of Danville for the sum of $2,620.62, this amount being the total rental of the 158 fire-hydrants for May, June, and July, 1895. In the other action suit was brought by the Danville Water Company against the City of Danville for hydrant rentals accruing in August, September, and October, 1895. Both causes were based upon the claim of the Danville Water Company against the City of Danville, arising under the contract embodied in the original ordinances of November 9, 1882, and May 1, 1883, and subsequent minor ordinances accepted in writing in due form by the Danville Water Company.

The combined suits are for the hydrant rentals during the two quarters embraced in May, June, July, August, September and October, 1895, and are based upon the rates fixed by the original ordinances and those subsequent thereto just mentioned. The defense, embodied in the pleas of the City of Danville in the actions in the Circuit Court of Vermilion County, was that on January 19, 1895, the council of the City of Danville had abrogated and abolished the former and original rates by an ordinance passed under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6, 1891, and in force July 1, 1891, entitled "An act to enable cities, towns, and

villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town or village and the inhabitants thereof." By this abrogating ordinance (R. 35), claiming to be based on and legalized by the Act of the General Assembly in force July 1, 1891, the City of Danville attempted to cut down and reduce the fire-hydrant rentals for the first 140 hydrants to the uniform annual rental of $50.00 per hydrant, and for all additional hydrants to $40.00 per hydrant and no more. This last named ordinance also attempted to fix the rates for water for the public drinking fountains at $5.00 per annum per fountain, and for sewer flushing purposes at 5 cents per 1,000 gallons and no more.

The pleas of the City of Danville filed in the Circuit Court set up the validity of this rate-reducing ordinance against the Danville Water Company in its declaration for indebtedness under the hydrant rates fixed in the original ordinances of November 9, 1882, and May 1, 1883, and the City of Danville tendered in its pleas as full satisfaction the reduced amount of the rentals under the rate-cutting ordinance of January 19, 1895. (R. 35.) The demurrers before the Circuit Court of Vermilion County, Ill., and later on appeal before the Supreme Court of Illinois, filed by the Danville Water Company, raised the question against these pleas of the city of Danville as to the validity of the ordinance of January 19, 1895, under the act of the General Assembly of Illinois, approved June 6, 1891, under the Constitution of the United States.

The demurrers operate by attacking the pleas setting up the rate-reducing ordinance in contravention of the Federal Constitution, and attacking the Act of the General Assembly of Illinois, approved June 6, 1891, upon the same ground. The grounds of attack, set up by the demurrers, are that both the ordinance of January 19, 1895, and the Act of the General Assembly, approved June 6, 1891, are contrary and repugnant to Section 10, Art. 1, Constitution of the United States, which for-

bids any State to pass a law impairing the obligation of a contract, and, further, that they are both repugnant to Sec. 1, 14th Amendment to the Constitution of the United States, which provides that no State shall deprive any person of his property without due process of law, nor deny to any within its jurisdiction the equal protection of the law. The affirming of the judgment of the Circuit Court of Vermilion County, overruling the demurrers of the Danville Water Company to the pleas of the City of Danville, by the Supreme Court of the State of Illinois, is assigned as error, and the decision of the Supreme Court of Illinois in upholding the ordinance of January 19, 1895, and denying the rights of the Danville Water Company under the original ordinances of November 9, 1882, and May 1, 1883, as vested rights, and the decision of the Supreme Court of Illinois to the effect that there was no vested contract to pay the rates charged by the Danville Water Company to the City of Danville, are errors repugnant to the Constitution of the United States.

The actions by the Danville Water Company are based on the indebtedness of the City of Danville arising under the original ordinances constituting a contract and vested rights as to hydrant rentals. The defense is made by the pleas of the City of Danville setting up the abrogating ordinance of 1895. The demurrers attack the validity of such abrogating ordinance and the act under which it was passed. Thus is the issue of the validity of the act and ordinance made.

Contentions of Plaintiff in Error.

As briefly as possible the Danville Water Company, plaintiff in error, contends:

1. That the original ordinance of the Council of the City of Danville of November 9, 1882, supported and recognized by the ordinance of May 1, 1883, and other minor and consistent ordinances (R. 5–31), created in the Danville Water Company abso-

lute, vested, contract rights to charge the defendant in error certain fixed maximum fire-hydrant annual rentals named, specified, and established in said original ordinance and other consistent ordinances above mentioned.

2. That the City of Danville had the right and power to contract for thirty years for the hydrant rentals contended for by the Danville Water Company as established in the original ordinances of November 9, 1882, and May 1, 1883, and those subsequent thereto.

3. That the City of Danville did contract with the Danville Water Company by means of the ordinances of November 9, 1882, and May 1, 1883, and the other minor subsequent ordinances (R. 5-31) for the payment of fixed rentals for fire-hydrants and municipal water supply, and that such ordinances created, as to such fixed rentals, in the Danville Water Company, vested rights.

4. That the attempt of the City of Danville, by its ordinance of January 19, 1895, under the Act of June 6, 1891, is illegal and void, and contrary to the Constitution of the United States, in that it attempts to reduce the rentals contracted for, and thereby deprive the Danville Water Company of its vested contractual rights, and deprive it of its property in abrogation of such rights and without due process of law, and without equal protection of the law.

5. That the ordinance of the City of Danville of January 19, 1895, and the Act of the General Assembly of Illinois of June 6, 1891, in so far as they attempt to reduce and give authority to reduce the contract rates established by the original and minor ordinances, are void, as being contrary to the Constitution of the United States, in that they deprive the Danville Water Company of its vested rights and take its property without due process of law, and deprive it of the equal protection of the law.

6. That the decisions of the Supreme Court of Illinois in Danville Water Co. v. City of Danville, 178 Ill. 229, and Same v. Same, 180 Ill. 235, which embody the reasonings supporting

the decision of this case, as declared by the opinion of the Supreme Court of Illinois (R. 104), are erroneous throughout, in that they set up principles in violation of vested rights, and contrary to the guarantee of the equal protection of the law, and to the exercise of due process of law in depriving a person of property.

ARGUMENT.

Counsel for the City of Danville take up the six contentions above offered and argue them *seriatim*.

1. On the proposition that the water company had vested rights in the rates of rental conferred by the original ordinances of the city, counsel submit that if the water company did not have a contract, it had nothing, and if such contract did not create a vested right, it created nothing.

A contract made by a municipality by contracting ordinance with a person or corporation for water covering a period of thirty years, having about fifteen years more to run, is valid, under the decisions of the federal courts, as a *business* contract. A contract for a certain term for the supply of a certain article at a certain price creates a *vested* right when the objects of the contract are lawful.

Illinois Trust Co. v. City of Arkansas City, 22 C. C. A. 171–181.

City of Walla Walla v. Walla Walla Water Co., 172 U. S. 1.

Defiance Water Works Co. v. City of Defiance, 90 Fed. 753.

Santa Anna Water Co. v. Beuna Ventura, 56 Fed. 343.

Insulated W., etc., Co. v. Baltimore, 13 C. C. A. 378.

Los Angeles City Water Works Co. v. City of Los Angeles, 88 Fed. 721.

Fergus Falls Water Co. v. City of Fergus Falls, 65 Fed. 586.

A strong case on this subject, and one which has been extensively quoted and approved, is the case of the Illinois Trust Co. v. the City of Arkansas City, 22 C. C. A. 171–181.

Judge Sanborn, in writing the opinion of the court, page 186, says:

"But it is insisted that this contract is beyond the powers of the city, and void, because it grants the right to use the streets of the city for the water company, and promises to pay rental for the hydrants for 21 years. The proposition on which this contention rests is that the members of the City Council are trustees for the public; that they exercise legislative powers; and that they can make no grant and conclude no contract which will bind the city beyond the terms of their offices, because such action would circumscribe the legislative powers of their successors, and deprive them of the right to their unrestricted exercise as the exigencies of the times might demand. There are two reasons why this proposition can not be successfully maintained in this case:

"First, It ignores the settled distinction between the governmental or public, and the proprietary or business powers of a municipality, and erroneously seeks to apply to the exercise of the former. A city has two classes of powers — the one legislative, public, governmental, in the exercise of which it is a sovereignty, and governs its people; the other proprietary, quasi private, conferred upon it, not for the purpose of governing its people, but for the private advantage of the inhabitants of the city and of the city itself as a legal personality. In the exercise of the powers of the former class it is governed by the rule here invoked. In their exercise it is ruling its people and is bound to transmit its powers of government to its successive sets of officers unimpaired. But in the exercise of the powers of the latter class it is controlled by no such rule, because it is acting and contracting for the private benefit of itself and its inhabitants, and it may exercise the business powers conferred upon it in the same way, and in their exercise it is to be governed by the same rules that govern a private individual or corporation. Dill. Mun. Corp. (3d ed.) 66, and cases cited in the note; Safety Insulated Wire and Cable Co. v. City of Baltimore, 13 C. C. A. 375, 377, 378, 66 Fed. 140, 143, 144; San Francisco Gas Co. v. City of San Francisco, 9 Cal. 453, 468, 469; Com. v. City of Philadelphia, 132 Pa. St. 288; New Orleans Gas Light Co. v. City of New Orleans, 42 La. Ann. 188, 192; Tacoma Hotel Co. v. Tacoma Light and Water Co., 3 Wash. St. 316, 325; Wagner v. City of Rock Island, 146 Ill. 139,

154, 155; City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114, 126; City of Indianapolis v. Indianapolis Gas Light and Coke Co., 66 Ind. 396, 403; Read v. Atlantic City, 49 N. J. Law, 558, 562. In contracting for water-works to supply itself and its inhabitants with water, the city is not exercising its governmental or legislative powers, but its business or proprietary powers. The purpose of such a contract is not to govern its inhabitants, but to obtain a private benefit for the city itself and its denizens. 1 Dill. Mun. Corp., paragraph 27; City of Cincinnati v. Cameron, 33 Ohio St. 336, 367; Safety Insulated Wire and Cable Co. v. City of Baltimore, 13 C. C. A. 375, and cases cited under it."

The language of the grant of power in that case was "full power and authority to contract for and procure water-works to be constructed for the purpose of supplying the inhabitant of such cities with water."

The court, in the opinion on page 181-2-3, holds that under that grant of power the mayor and council were vested with the right to make such contracts for such term as, in their discretion, they thought proper, and hold that there was nothing in the record to show that the mayor or council had exceeded their authority or abused their discretion when they fixed the term of the contract at twenty-one years.

In the case of the Walla Walla City v. Walla Walla Water Co., 172 U. S. 1, the Arkansas City case was cited and approved by this Court.

We will not quote further at length from these authorities, but invite the Court's attention to them and to the State decisions cited and approved by Judge Sanborn in his opinion. The general weight of authority in the State courts is that contracts such as are in issue in this case are good.

It can be confidently stated that the modern decisions on this question in all courts are to the effect that these contracts are good, and that in entering into such contracts the officers of a municipality stand in substantially the same position as the directors of a private corporation.

As shown (R. 62), the original ordinance of the city of November 11, 1882, in Sec. 8 reads as follows:

> "In consideration of the benefits which will be derived by the said city and its inhabitants from the construction and operation of the said water-works, and in further consideration of the water supplied hereby secured for public uses, and as the *inducement* to said water company to accept the provisions of this ordinance and *contract*, and to enter upon the construction of said water-works, the right and privileges hereby granted to and *vested* in said water company shall remain in force and effect for thirty years from the passage of this ordinance; and for the same consideration and as the same inducement, the City of Danville hereby rents of the Danville Water Company for the uses hereinafter stated one hundred fire-hydrants of the character hereinafter described for and during the term of thirty years from the passage of this ordinance, and agrees to locate them promptly along the line of the street mains, on demand of said company, and on submission by it to said city of a plan of the location of said street mains, and agrees to use the said hydrants carefully and to pay said water company for any injury which may happen to any of them when used by any officer, servant or member of the fire department of said city, and agrees to pay rent for said one hundred hydrants at the rate of seventy-five dollars each per year, and agrees to pay during the unexpired term of said ordinance and privilege, for any additional fire-hydrants which the city may hereafter locate, at the rate of sixty-two and fifty one-hundredths dollars each per year; all of which sums shall be paid by said city to said water company, beginning from the dates when each of such hydrants shall be put into successful operation, in quarter-yearly installments on the first days of February, May, August, and November of each year, terminate upon the expiration of said term of thirty years, or upon the purchase of said works and their privileges and property by the said city."

It is perfectly plain by the terms of this ordinance, and this section just quoted, that the city was holding out certain fixed prices for municipal water service for a fixed period of years in consideration of the benefits which would be derived by the city and its inhabitants from the construction and operation of water-

works. The fixed rates for a fixed period of years are offered as a consideration for a contract, and the ordinance and section use these words: "As an *inducement* to said water company to accept the provisions of this ordinance and *contract*, and to enter upon the construction of said water-works, the right and privileges hereby granted to and *vested* in said water company shall remain in force and effect for thirty years from the passage of this ordinance." The section and ordinance then go on, as the Court will see, in the usual language of contracts, and fix definitely and certainly the maximum hydrant rentals to be charged by the water company. It must be remembered that the water company had not begun the construction of its plant at the time this ordinance was passed, but the ordinance was passed by the city, and the contract made as an inducement which should operate in bringing about the construction of a plant in the city. Section 14 of this ordinance has plainly the intent to give to the ordinance not only the spirit but the very form itself of a contract, creating *vested* rights. This Section 14 reads as follows:

> "*This ordinance shall become binding as a contract on the said City of Danville in the event that the said Danville Water Company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of the terms, obligations, and conditions of this ordinance, and upon such acceptance this ordinance shall constitute the contract, and shall be the measure of the rights and liabilities of the said city and of the said water company.*"

There could be no words in all our language more carefully and expressly selected to convey the idea of the establishment of a contract between the city and the water company. If the city has no ordinary business contracting power by which it can furnish itself with necessities for the public good by contract, then the very life of a municipal corporation, in so far as benefits to the public are concerned, is gone. It is necessary to the very existence and progress of such a municipal corporation that it have the power to make contracts to supply itself with water for

public uses. If this be not true, then persons and corporations in the business of supplying municipal necessities must be at the mercy and caprice of the city government to establish any rate they may choose, or such person or corporation must refuse to supply the city with water or other necessities under the disadvantage of the city having no definite, fixed, legal, and reliable contracting power. Under this head we are discussing the existence of *vested* rights and the fixed maximum rates in favor of the water company. If there was a contract created by the above mentioned ordinance, then that contract had *rights* under it, and those rights were *vested rights*, or no rights at all. The time during which those rights should exist was a part of the essence of the contract, and the definite hydrant rentals were also a part of the essence of that contract. It must be remembered that we do not contend that the water company had exclusive rights in the city as against municipal water-works or water-works erected by other corporations. We simply contend that the city created a fixed price for water furnished to it, and a fixed time during which the water company should enjoy such price of water furnished.

On May 1, 1883, the city council passed, and the mayor approved, and on June 8, 1883, there was published, another ordinance carrying out and amending the last named ordinance. (R. 65.) This ordinance intensifies the original ordinance by means of a ratification of the original ordinance, and refers to the original ordinance as "A *contract* existing between the City of Danville and the Danville Water Company," as is shown in Section 2 of this amending ordinance. The first section of this last named amending ordinance shows on its face that the water company has commenced the construction of its plant, and it is a further inducing contract in all of its terms. The water company began construction under the original contract expressed in the original ordinance, and made its investment of capital thereon. It continued its construction under the ratifying, amending, and conforming ordinance, and con-

tinued to invest its capital in the construction of the plant. There are fifteen other ordinances which reaffirm the contract of the original ordinance and provided, from time to time, for the construction of hydrants as the city needed them at the price agreed on in the original ordinance. Two of these ordinances, namely, the ordinance passed August 9, 1894, and the ordinance passed October 18, 1894, fix a rate of $40.00 for specified hydrants. The water company, for these particular hydrants, by its written consent, agreed to the price suggested in the ordinances, but the ordinances themselves, and the consent thereto, only embraced these *special* hydrants, and did not touch or affect the rates fixed for any other hydrants. There is, however, no contention over this matter, as the claim of the water company as to these hydrants, specially provided for, is in strict conformity with the water company's cause. Certainly, then, we may place this much behind us in this argument when we say that it must be conceded that the wording and terms of the original ordinances are in strict conformity with the expressions of the binding *business contract* conveying *vested rights.*

2. We will now discuss the right and power of the city to contract with the water company for the maximum hydrant rentals contended for by the water company as fixed in the original ordinances, and those subsequent thereto and consistent therewith. The Danville Water Company was incorporated in 1882. There were in force at the time the acts of the General Assembly of Illinois, approved April 9, 1872, and April 10, 1872, both in effect on the same day, July 1, 1872. (1 Starr and Curt. Stat., pages 545 and 508.) The first of these acts provided as follows:

> "That in all cities . . . where water-works may hereafter be constructed by an incorporated company, the city . . . authorities in such cities . . . may contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years. Any such city . . . so contracting may levy and collect a tax on all taxable property within such city . . . to pay for the water so supplied." (1 Starr & Curt. Stat., p. 545.) "The city

council . . . shall have the power to provide for a supply of water . . . by the construction and regulation of . . . water-works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years."

The discussion of the right and power of the city to contract for the maximum hydrant rentals for thirty years involves the argument, just offered above, touching the construction of those acts under the wording and terms used therein. There can be no doubt but that the acts contemplated the erection of water-works in the cities and towns of Illinois, and that the acts intended that such cities and towns should *contract* for water furnished them, and that their contracts should be formed by means of ordinance, duly passed and approved.

We will not take the time of the court by repeating the argument which we have already used in regard to the construction of the words and terms of these acts. What we have already said we deem sufficient to show the right and power of the city to contract for a definite consideration, such as *definite* rates, by ordinance, for the water to be furnished.

Both the city and the water company complied with these acts by the passage, approval, and acceptance of the original ordinance, which fixed the rates and named the consideration of the contract embodied in that ordinance. No modification of that ordinance and of its contract was ever made afterwards except by the acquiescence and written consent of the water company. It is not, however, contended anywhere that the water company ever abandoned in any respect its fixed rights under the original ordinance, except in the two ordinances passed in 1894, where the water company, of its own free-will and accord, for its own reasons, in writing, consented to a rate of $40.00 rental for *certain specified* hydrants. Of course, then, no discussion along this line is necessary. We submit the acts in effect July 1, 1872, to the inspection of this Court, and respectfully

contend, under what has already been said regarding the construction of those acts, that they confer absolute power and right on the city by ordinance to *fix* the maximum hydrant rentals for a period of thirty years. We may notice briefly, however, in passing, that in both of these ordinances are words used which employ all the essentials and characteristics of the contract.

In the first of these ordinances the words "*May contract with such incorporated company for a supply of water*" are used. When persons and corporations are empowered to make contracts, it is supposed that they have the power to negotiate concerning all the terms of a contract. We repeat that the most important part of a contract is a *definite consideration*, and that fixed hydrant rentals can be the only *definite consideration* conceivable. The Supreme Court of Illinois, in its above referred to opinions, says that the clause in the City and Village Act "*For a period not exceeding thirty years,*" qualifies only the words "*Construct and maintain the same.*" The original ordinance, contended for by the water company, was passed and accepted at the time of the *construction* of the plant. If the words relating to the thirty years qualify only the words "*Construct and maintain,*" then the original ordinance is in conformity with the City and Village Act, and no subsequent ordinances modifying it or abrogating it can be in conformity with such act, because they would not relate to the *construction* of the plant, that being a matter of the distant past. If the interpretation of the Supreme Court of Illinois as to the wording and meaning of the City and Village Act is correct, then it must be true that only one ordinance could fix the rates, and *that must be an ordinance relating to the word "construct."* Without further comment, these acts giving towns and cities the rights and powers we contend for are left for the construction of this Honorable Court.

3. We shall now discuss the *fact* of the city actually contracting by its original ordinance, and subsequent consistent ordinances, with the water company, for the maximum rentals for fire

hydrants, and the question of vested rights arising under such a contract. We have gone over the matter of whether or not the city had the right and power under the acts in effect July 1, 1872, by ordinance, to contract with the water company for maximum rates. If there was such a right and power in the city, and that power and right were to be exercised by means of ordinance, then the orignal ordinance of 1882, and those consistent therewith, carry out the provisions of the means given for contracting. The existence of the original ordinance is a *fact*. The character of the power therein is the only matter under discussion. If the city had the power to contract, and did contract for definite rates for a period of thirty years, and the water company accepted such a contract, then both the water company and the city are bound thereby, and the water company had rights thereunder. Those rights are not indefinite rights, but they are definite rights, subject to no whim or caprice of the city authorities, and they are *vested rights*. If they be *vested rights*, they are sacred under the Federal Constitution.

4. We submit the proposition that the city by ordinance of January 19, 1895, attempted, illegally, and without right and power under the constitution, to deprive the water company of its vested rights. If such rights were vested rights, then any attempt, by any ordinance, authorized by any acts of the legislature, was an attack upon that which is sacred under the constitution, and that such an attempt was an attempt to take property without due process of law and without equal protection of the law.

5. We would attack the validity of the ordinance of January 19, 1895, which abrogates the established rates, and we also attack the act of the General Assembly of Illinois of June 6, 1891, in attempting to give authority to the city to abrogate the original ordinance as a contract between the city and the water company. If the rights of the water company were vested rights, then any attempt by ordinance to take away those rights was illegal. If the rights were vested rights, then any

attempt by the legislature through an enactment to give authority to a city council to attack and take away such rights was also illegal under our constitution.

We deem it unnecessary to enlarge upon this and the three preceding sections of our contentions.

6. In discussing our last contention, there can be no argument stronger than the argument set forth in the dissenting opinion of three of the judges when these cases were before the Supreme Court of Illinois. Justices Phillips, Craig, and Cartwright dissented from the opinions of the Supreme Court of Illinois in these two cases. Judge Phillips wrote the dissenting opinion. We deem it proper to set forth this dissenting opinion, and we take the liberty to do so in the immediately following portion of this brief:

DISSENTING OPINION BY PHILLIPS, J.

"I do not concur with the reasoning or conclusion reached in the opinion adopted by the majority of this court.

"On this record two questions are presented for adjudication in this court. First, is ordinance No. 517 a valid enactment, and if so, it was error to sustain the demurrer to the first and second pleas; and second, whether the allegation to the declaration showed a valid promise by the city for the payment of the rental for 158 hydrants in the manner authorized by law. By Section 1 of Article 10, Chapter 24, it was provided: 'The city council or board of trustees shall have the power to provide for the supply of water by the boring and sinking of artesian wells, or by the construction and regulation of wells, pumps, cisterns, reservoirs, or water-works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years; also to prevent the unnecessary waste of water; to prevent the pollution of the water and injury to such wells, pumps, cisterns, reservoirs, or water-works.'

"This section was in force at the time of the adoption of the original ordinance by which the contract was made for the one hundred hydrants at $75 each, and the additional

hydrants at a specified rate. The right is granted by the foregoing section to contract for a supply of water for a period of thirty years, and the right to contract for a supply necessarily authorizes the right to fix the rate at which the supply shall be furnished. By the provisions above quoted the State invested the municipality with power to make and contract for a supply of water for a period of thirty years, and it would be difficult to comprehend the meaning of terms authoring a contract to be made for a supply of water to be furnished without including therein the right to fix the price at which it should be furnished. This power conferred by the legislature sanctions a particular act and authorizes it to be done. Where a contract is made to accomplish that act thus sanctioned it must be held valid. The power of the State in regulating, governing, and conferring power on municipalities is supreme, but where it confers a power with reference to a contract, and that power is once exercised, it is subject, like other legislative powers, to the authority of the State and Federal Constitutions; and when it invests a corporation which derives its power from the State with the power to make a contract and that power is exercised, the legislature is thereafter concluded from annulling or rendering invalid such a contract. Such a contract is only subject to judicial construction and is sacred from interference by the legislative power. Such a contract, made by a municipality under the power conferred by a State legislature, can not be impaired, and has thrown around it positive restrictions of the Federal and State constitutions. (*Citizens' Water Co.* v. *Bridgeport, etc., Co.*, 55 Conn. 1; *Rockland Water Works Co.* v. *Camden*, 80 Me. 544; *N. O. Water Works Co.* v. *Rivers*, 115 U. S. 74; *St. T. W. W. Co.* v. *N. O. W. W. Co.*, 120 U. S. 64.)

"In a contract running for a period of years for the supply of water, a different rule is invoked from that which occurs in the case where a contract is made for lighting a city. In the one case the legislature has conferred the power on the municipality to contract for a period of years, in the other it is silent as to such power. The municipality having no power other than that granted by the legislature, is limited in restriction to the powers granted and known conditions of most of the cities and villages of the State of Illinois, which necessarily must exercise the power of providing a means of supplying their inhabitants with water, and could not do so without conferring privileges and entering into contracts in many cases, and the legislature, deeming the

power to contract for a period of years necessary to secure such supply of water, by the enactment above quoted exercised a power not restricted by the constitution of the State of Illinois, and conferred upon the municipality a right to so contract for a term of years, and the necessary construction of the section heretofore quoted is that it conferred the power to contract for a supply of water and fix the price thereof for a period of thirty years. Subsequent to that enactment, by an act approved July 1, 1895, entitled 'An Act to enable cities, incorporated towns and villages to contract for a supply of water for public use, and to levy and collect a tax for the water so supplied,' it was provided that 'in all cities, incorporated towns and villages where water works have been or may be hereafter constructed by any person or incorporated company, the city, town or village authorized in such statute, incorporated towns and villages may contract with such person or incorporated company for the supply of water for public use for a period not exceeding thirty years.'

"No reasonable construction can give the former section with reference to the period to contract a different construction from that of the latter act, and both authorize the fixing of a price at which the water supplied shall be furnished. It was not error to sustain the demurrer to the first and second pleas.

"The contention that the declaration does not set forth a binding promise because it contains no averment that before or at the time of making the contract a provision for the collection of a tax to meet payments as they might fall due was provided for, or that no appropriation had been made before or at the time of making contract, can not be sustained. The constitutional prohibition against going into debt beyond the amount limited by the constitution does not prevent the making of contracts for supplying an article of daily consumption at a stipulated price, to be paid for and which was paid for by annual appropriations levied and collected for that purpose at stated intervals after delivery, and that does not create an indebtedness within the meaning of the constitution. (*City of East St. Louis* v. *East St. Louis Gas Light and Coke Co.*, 98 Ill. 415.)

"The sufficiency of the declaration in stating the cause of action must be held well pleaded when it violates no provision of the ordinance of the city or the constitutional laws of the State of Illinois, and if the city has the power to make a contract for a period of thirty years under the legislation

of the State, and that legislation is not unconstitutional, then it must be held that the declaration states a cause of action, and the power having been conferred upon a municipality to enter into a contract for such a length of time for an article of daily consumption, it is not the incurring of an indebtedness which requires an appropriation made providing for the whole period of thirty years, as to so hold would place a restriction on the power of municipalities to contract, and would obstruct public wants, retard improvements, and not be consistent with the spirit and meaning of the act. It was not error for the court to refuse to carry the demurrer back to the declaration, in my opinion."

Craig and Cartwright, JJ., also dissenting.

We must inquire now, what are the contentions of the city against the claim of the water company for the payment of the hydrant rentals expressed in the original ordinances and in the subsequent and consistent ordinances. The contentions are that on January 17, 1895, the city council passed, and on January 19, 1895, the mayor of the city approved, an ordinance (R. 35) rearranging and refixing the hydrant rentals at a lower figure, and that such ordinance was in conformity with an Act of the General Assembly of Illinois of June 6, 1891 (Hurd's Stat., p. 305, Sec. 267*f*), entitled "An act to enable cities, towns, and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town or village or the inhabitants thereof." The city contended that under such ordinance the city owed as rentals a sum less than that contended for by the water company under the original and subsequent and consistent ordinances. Another contention made by the city was that it had not by the ordinances set up as the basis of the water company's action nor by any other ordinance or ordinances or in any manner, at any time, before or after the indebtedness claimed by the water company, made any provision for the collection of a direct annual tax sufficient to pay the indebtedness claimed by the water company. Nor was

any provision made for the collection of such tax, nor the payment of said indebtedness by such tax. The contention was interposed, by means of the plea of the city, that the lack of the provision by ordinance, or otherwise, for a direct tax to pay the water rentals contended for by the water company was in violation of the provisions of Section 12, Article 9, of the Constitution of Illinois.

We may say then, briefly, that the defenses of the city were, 1. That under the Act of 1891 an ordinance had been passed abrogating the original ordinance establishing the rates in favor of the water company, and 2. The Constitution of Illinois forbade the city to contract as it had done upon the face of the original ordinances. The question is, if the terms of the ordinance passed fixing the rates under which the water company constructed and began the operation of its plant created vested rights, does the abrogating ordinance of 1895 divest such vested rights, and the Constitution of Illinois prevent originally the vesting of such rights? We shall discuss the merits of the first mentioned defense of the city. The city contended that its abrogating ordinance was made valid and legal by the Act of 1895, and that such Act was made valid and legal by Section 9 of the General Incorporation Act of Illinois of April 18, 1872, which provides as follows in said Section 9: "The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act." (Starr Curt. Ann. State, 2d Ed., p. 1006.)

It was urged by the city that this general incorporation act was the act under which the water company had its corporate existence, and that subsequent acts of the legislature could operate to allow the city to throw off and discard whatever water rates it was paying to persons or corporations, and fix its own reduced rates. If the terms of this general incorporation act be permitted to reach far enough to permit the legislature at any

time to permit, in its turn, a municipal corporation to throw off the obligations of its existing contracts, then the Darmouth College case can be more easily overruled, and its provisions avoided, than were the statutes of Mortmain, for a season, indirectly avoided by the clergy under the ancient law. Certainly, then, the Darmouth College case must be supported by some legislative enactment as far-reaching and impregnable as Henry VIII.'s Statute of Uses and Trusts. Certainly, then, some such subsequent legislation is necessary to support the weakness of the great Darmouth College case. We may safely grant the power to the Legislature of Illinois to "prescribe such regulations and provisions as it may deem advisable" for all corporations. Does this mean that the legislature shall have power to authorize a municipal corporation to repudiate its contract whenever it is disposed to do so?

No one has ever denied the right of the legislature to impose *police* regulations and other provisions as to administration, taxes, inspection, examination, etc., etc., upon corporations. The legislature has a perfect right to require an individual or a corporation to conform to a multitude of provisions, but it has no right to make any law by which a person or a corporation shall enter upon legitimate business and sell a legitimate commodity for a certain price during a certain term, and then in the midst of the performance of the contract relating thereto, deprive said person or corporation of its *vested, contract rights*. If the court will examine the language of the general incorporation act, above quoted, it will be seen that no right or authority in its language is to be found which confers upon the Legislature of Illinois the right to authorize the City of Danville to repudiate its contract. If this act is in force, then, it is the force which is bound up in the power of the legislature to make provision for the government, police regulation, etc., of corporations in the administration of their affairs in connection with the public health, regulations, morals, and general good, etc. If it does not mean this it can mean nothing, for if it goes beyond this and

touches the sanctity of contracts and vested rights thereunder, it becomes repugnant to the Federal Constitution and falls under the decision in the Darmouth College case.

We have discussed the general incorporation act as a basis for the business validity of the Act of 1895. The Act of 1895, granting the power to the city to fix its own rates in abrogation of its former ordinances and contracts, is certainly in direct violation of the constitution in its guaranteed protection to vested rights. On the same date when the general incorporation act, and Section 9 thereof, went into force (July 1, 1872) there also went into force an Act entitled "An Act to enable cities . . . to contract for and supply all water for public use, and to levy and collect a tax to pay for water so supplied." Sections 1 and 2 of this Act provide, (1) "That in all cities . . . where water-works may hereafter be constructed by an incorporated company, the city . . . authorities in such city . . . may *contract* with such incorporated company for a supply of water for public use for a period not exceeding thirty years." (2) "Any such city . . . so contracting may levy and collect a tax on all taxable property within such city . . . to pay for the water so supplied." (1 Starr Curt. Stat., p. 545.)

It is seen that this last Act went into force and operation on the same date on which the general incorporation act went into force, and the two acts of the General Assembly of Illinois are *in pari materia*, and must be taken and construed together. The water company was organized and incorporated as much under the one act as the other, and its nature, powers, and rights were fixed by both acts. Unmistakably the last quoted act gives the right and power to the city to contract for water for thirty years. It is contended by the city that this relates only to the power of the city in relation to the duration or term of the contract, and does not relate to the *consideration* of the contract. If the power is given to *contract*, then the power to do all things and agree upon all things and provide for all things necessary for a contract must also be given. It would be worse than folly to

say that a city could *contract*, and that it could not have the power to definitely fix and agree upon, and clearly arrange, the *consideration* of its contract and other characteristics of a contract. It is distorting the meaning of the general incorporation act and its companion act to say that reference was had therein only to the period of time for which the city shall bind itself to take water, and that the city is powerless to be definite about the consideration which it is to pay.

If the city can not commit itself on the question of consideration, then it is absolutely cut off from the very power which the legislature is pretending to give it. A person or a corporation deprived of the right of *negotiating* and *fixing* a *consideration*, certainly is deprived of the most important thing in connection with contracting powers. So then we find the law of Illinois at the time of the incorporation of the water company providing two things, and the first of these is—that the legislature shall have the right to impose regulations upon corporations, and the second is—that cities shall have the right to contract for thirty years with corporations for their water supply. In support of its plea to the effect that the water company, at the time of its incorporation, was subject to the control, in its fixed rates or contract prices for water supply, the city has urged that Section 1, Article 10, of the City and Village Act of April 10, 1872, in force July 1, 1872, provided as follows: "The City Council . . . shall have power to provide for a supply of water . . . by the construction and regulation of . . . water-works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years." (1 Starr Curt. Stat., p. 508.)

It was urged that this last named act was *in pari materia* with the act of April 9, 1872, as they both went into effect on the same date, July 1, 1872. The Supreme Court of Illinois construed this City and Village Act as they construed the companion act, that is, that the city council were confined to the term of

thirty years in so far as their powers were concerned in relation to authorizing and empowering persons or corporations to construct and maintain water plants. That court construed the act to mean that the rates were to be fixed from time to time in the future as might suit the convenience, will and wish of the city authorities. This act is certainly capable of a far different construction. It provides that the city shall authorize corporations to construct and maintain water-works for the supply of water to the city at such rates as may be fixed by ordinance. "*At such rates as may be fixed by ordinance*" is entirely in conformity with our contention. We contend that such rates were fixed by ordinance, and that they were here fixed by the original ordinance under which the water company constructed and began the operation of its works.

It is worthy of notice that the word "*ordinance*" in the term "*at such rates as may be fixed by ordinance*" is in the singular. If it had been the intention of the legislature to grant the city power, at various times and on various occasions throughout the future, to fix and refix and unfix rates, the term would have necessarily been "*ordinances.*" There is nothing in this City and Village Act which is out of harmony with our contentions. The Supreme Court of Illinois has said in relation to the City and Village Act that the clause, "*For a period not exceeding thirty years,*" qualifies the words "*construct and maintain the same,*" but does not qualify the words, "*At such rates as may be fixed by ordinance.*" Let us see if such reasoning is sound. What does the word "*and*" beginning the last clause of the quotation from the City and Village Act mean? This word connects not part of, but *all* of what has been said before with the words which follow it, to wit: "*For a period not exceeding thirty years.*" It is certain that there is no break whatever between the words "*construct and maintain the same*" and the words "*at such rates as may be fixed by ordinance,*" and they are certainly a consolidated, unified whole, and any qualifying words which follow will relate to this whole.

If the terms "*Construct and maintain the same*" and "*At such rates as may be fixed by ordinance*" were disjointed or broken in two it might be imagined that the term "*for a period not exceeding thirty years*" would qualify one or the other of the disjoined parts. But such is not the case. They read along together and are absolutely inseparable, being one and the same in a well rounded, concise expression. Quoting from the opinion of the Supreme Court of Illinois on the construction of the terms of the City and Village Act shown above, we find that the Supreme Court says: "In other words, the city council may authorize a private corporation to construct and maintain waterworks for a period not exceeding thirty years, and they may authorize a private corporation to construct and maintain the waterworks at such rates as may from *time to time* be fixed by ordinance." The statute leaves out the terms "*time to time*," but the Supreme Court of Illinois reads them into the statute. We maintain that the water company and the city carried out the statute when they "*fixed by ordinance*" the rates to be charged for water furnished the city. Those rates were not fixed by the will or the caprice of the water company nor by the tacit understanding on the part of the citizens or the authorities of the city, but they were "*fixed by ordinance*," and that ordinance was the original ordinance under which the plant was built and began operation.

The Supreme Court of Illinois said in its opinion, "it (the city) has no authority, even by contract, to control and embarrass its legislative powers and duties." The authorities which we have already cited show that the city did not affect "its *legislative powers*," but that it affected only its *business powers*. It is very true that the council can not affect the future *legislative* powers of the city, but it can affect and can fix its *business* powers. The decision of the Supreme Court of Illinois to which we have just referred is found in 178 Ill. 229, and again in 180 Ill. 235: The two decisions are exactly similar, and relate to the two exactly similar actions in the Circuit Court of Vermilion County by the water company against the city, which two

actions were later, as we have shown above, consolidated, and now in consolidated form are before this Court upon a writ of error.

We shall not discuss at any length the nature of the further defense of the city set up in its plea, contending that no special tax had been provided for the payment of the rates established under the original ordinance and contended for by the water company. The best argument on this point is a display of what the Supreme Crurt of Illinois itself said on this subject.

The decision of the court (178 Ill. 229 and 180 Ill. 235) disposes of this entirely, and it is not a question before this Court.

The cases of the Freeport Water Company v. The City of Freeport and the Rogers Park Water Company v. John B. Fergus, now under submission in this court, contain questions similar to those in this case. To Messrs. George C. Fry and James W. Hyde and their most able brief, as well as to Mr. Newton A. Partridge and his most able brief, we are indebted for a great deal of assistance in the preparation of this brief, and we desire that the court shall consider this case in connection with the Freeport and the Rogers Park cases.

Having closed the statement, contentions, and argument of our case, we respectfully call the Court's attention to our points and authorities.

POINTS AND AUTHORITIES.

Contracts by the authority of the municipality for water to be furnished it and its inhabitants are made, not in the exercise of the governmental powers of the municipality, but of its proprietary or *business* powers, and are governed by the rules applicable to business corporations.

> Little Falls Electric & Water Co. v. Little Falls, 102 Fed. 663.

Illinois Trust & Savings Bank v. City of Arkansas City, 22 C. C. A. 186.
Dill. Mun. Cor. (3d Ed.), § 66 (cases in note).
Safety Insulated Wire & Cable Co. v. Baltimore, 13 C. C. A. 375–8.
San Francisco Gas Co. v. San Francisco, 9 Cal. 453, 468, 469.
Com. v. City of Philadelphia, 132 Pa. St. 288.
New O. Gas Light Co. v. New Orleans, 42 La. Ann. 188.
Tacoma Hotel Co. v. Tacoma Light and W. Co., 3 Wash. St. 316.
Wagner v. City of Rock Island, 146 Ill. 139, 154, 155.
City of Vincennes v. Citizens Gaslight Co., 132 Ind. 114, 126.
Indianapolis v. I. Gaslight, etc., Co., 66 Ind. 396, 400.
Read v. Atlantic City, 49 N. J. Law, 558, 562.
1 Dill. Mun. Corp., §§ 26, 27.
Cincinnati v. Cameron, 33 Ohio St. 336, 367.
Dill. Mun. Corp., § 949.
Weightman v. Washington, 1 Black, 49.

The City of Danville had the power and right to contract by ordinance with the Danville Water Company for water-supply for the public use.

Act of General Assembly of Ill., approved April 9, 1872; in effect July 1, 1872. Starr & Curtis' R. S. Ill., 2d Ed., p. 865.
Act of General Assembly of Illinois, approved April 10, 1872; in effect July 1, 1872. Starr & Curtis' R. S. Ill., Ch. 24, Art. 4, Sec. 1.
1 Dill. Mun. Corp., 3d Ed., Secs. 146, 443.

The Danville Water Company, having accepted the original ordinance with its grants and franchise rights, and having carried out its contract with the city and the public as to the con-

struction and operation of its works and the supplying of water, has a contract protected by the constitutional provisions forbidding the passage of a law impairing the obligation of contracts.

2 Dill. Mun. Corp., Sec. 691.
N. O. Gas Co. v. La. Light Co., 115 U. S. 650.
Louisville Gas Co. v. Citizens Gas Co., 115 U. S. 683.
N. O. Waterworks Co. v. Rivers, 115 U. S. 674.
N. O. W. W. Co. v. St. Tammany W. W. Co., 14 Fed. Rep. 194.
Erie R. R. v. Penn., 153 U. S. 628.
Reagan v. Farmers', etc., Co., 154 U. S. 362.
Walla Walla v. Walla Walla Water Co., 172 U. S. 1.
City of Quincy v. Bull, 106 Ill. 337, 346, 352.
Wagner v. Rock Island, 146 Ill. 139, 153, 158.

A binding contract grows out of a license when the license has been acted upon so extensively and substantially that to revoke it would be unjust.

Gregsten v. Chicago, 145 Ill. 451, 461–8.
Belleville v. Citizens, etc., Co., 152 Ill. 171, 185–6.

When accepted, this legislative grant becomes irrevocable.

Dartmouth College v. Woodward, 4 Wheat. 518.
People v. O'Brien, 111 N. Y. 1.
Fletcher v. Peck, 6 Cranch. 87.
Von Hoffman v. Quincy, 71 U. S. 535.
1 Dill. Mun. Corp., Sec. 53.

Municipal grants and ordinances give rise to the same rights and are subject to the same constitutional prohibitions as other legislative grants.

Williams v. Bruffy, 96 U. S. 176.
N. O. Water W. Co. v. La. Sugar, etc., Co., 125 U. S. 18.
N. O. Water W. Co. v. Rivers, 115 U. S. 674.

St. Tammany, etc., Co. v. N. O. W. W. Co., 120 U. S. 64.
Von. Hoffman v. Quincy, 71 U. S. 535.
4 Thompson on Corps., Secs. 5427–8, 1019.

In enacting the original ordinance and its consistent additional ordinances, the city council had to do with the expediency question, and the courts and subsequent councils must be guided thereby. When the rates are fixed before the acceptance of the ordinance, they become part of the contract and are protected by the Constitution. The expediency of the rates was a legislative matter entirely for the council inducing and contracting with the water company in the original ordinance, and it disposed of such matter by its contracting ordinance. Afterward the question of the existence of expediency is gone, and the question alone of the existence of the contract remains.

Munn v. People, etc., 94 U. S. 113, 133.
Ruggles v. People, etc., 91 Ill. 256, 264.
C., B. & Q. R. R. Co. v. Iowa, 94 U. S. 155.
Peik v. Chicago & Northwestern R. R. Co., 94 U. S. 164, 178.

Whenever the granting of privileges becomes bound by an express or an implied contract to serve the public, such undertaking will support the grant as a contract, no matter how inadequate such contract may be. The legislature having the power to make such grant, the legislative judgment is conclusive both as to the necessity for the grant and the amount of the service to be rendered. The courts have no power to interfere, however inadequate or inexpedient the consideration or unreasonable the grant may appear to them.

Godson v. Winchester, etc., Asso., 12 Bush, 114.
Louisville Gas Co. v. Citizens Gas Light Co., 115 U. S. 700.
Ohio Life Ins. & Trust Co. v. Debolt, 16 How. 428.
N. O. Gas Light Co. v. La. Light, etc., Mfg. Co., 115 U. S. 650.

N. O. Water W. Co. v. Rivers, 115 U. S. 674.
Budd v. State of N. Y., 143 U. S. 517.
Brass v. State of North Dakota, 153 U. S. 391.
N. Y. Lake Erie & W. R. Co. v Penna., 153 U. S. 626.

The constitution forbids any impairment of the obligation of contracts.

Dartmouth College v. Woodward, 4 Wheat. 514.
Bronson v Kinzie, 1 How. 319.
McCracken v Hayward, 2 How. 608.

Any enactment, from whatever source originating, to which the State gives the force of law, is a statute of the State within the meaning of the constitution. The constitution prohibits a State from enforcing an unconstitutional enactment, regardless of the source from which it originated. The ordinance complained of was the equivalent of an enactment of the State.

Williams v. Bruffy, 96 U. S. 176, 183.
N. O. W. Works Co. v. La. Sugar Ref. Co., 125 U. S. 18.
4 Thompson Corp., Secs. 5427–8.

An unconstitutional enactment is not a law, and is as inoperative as if it had never been passed.

Norton v. Shelby Co., 118 U. S. 425, 442.

The ordinance of Jan. 19, 1895, which abrogates the rates fixed by the original ordinances, is void, because it impairs the obligation of the contract between the city and the water company.

N. O. Water Co. v. La. Sugar Ref. Co., 125 U. S. 18.
N. O. Water Co. v. City of N. O., 164 U. S. 481.
City Ry. Co. v. Citizens St. Ry. Co., 166 U. S. 557.
N. O. W. W. Co. v. Rivers, 115 U. S. 674.
St. T. W. Co. v. N. O. W. W. Co., 120 U. S. 64.

The right of *regulation* does not give the council or legislature the right to impair contracts made prior to the regulating

act, unless the contract is prejudicial to public health, peace, morals, or good order.

Stone v. Mississippi, 101 U. S. 814.
Sinking Fund Cases, 99 U. S. 700, 740, 742, 721, 748, 749.
Spring Valley W. W. v. Schottler, 110 U. S. 347.
2 Morawetz Private Corp., Secs. 1101, 1102, 1105, 1112.
Town of Lake v. Rosehill Cem. Co., 70 Ill. 191.
Walla Walla v. Walla Walla W. Co., 172 U. S. 1–15.
1 Dillon Mun. Corp., Sec. 142.
N. O. Gas Co. v. La. Light Co., 115 U. S. 650.
N. O. W. W. Co. v. Rivers, 115 U. S. 674.
R. R. C. v. Maine, 96 U. S. 511.
Santa A. W. Co. v. Santa Buenaventura, 56 Fed. R. 339.

The great weight of authority is that when an express power is given to a municipality to contract or provide for water works, such municipality has the power to contract for fixed rates, and for a definite term.

Atlantic City Works v. Atlantic City, 48 N. J. Law, 378.
Read v. Atlantic City, 49 N. J. Law, 558.
Ludington Water Supply Co. v. City of Ludington, 119 Mich. 480.
Cartersville Gas & Water Co. v. Mayor, 89 Ga. 683.
Grant v. City of Davenport, 36 Ia. 396.
Salena v. City of Neosho, 127 Mo. 627.
State v. City of Phillipsburg, 23 Mont. 16.
Crosby v. City Council of Montgomery, 108 Ala. 498.
City of Greenville v. Greenville Water Works, 27 So. Rep. 764.
City of Indianapolis v. Indianapolis Gas Light & Coke Co., 66 Ind. 396.
City of Connersville v. Connersville Hydraulic Co., 86 Ind. 184.
City of Valparaiso v. Gardner, 97 Ind. 2.

City of Vincennes v. Citizens' Gas Light Co., 132 Ind. 114.

City of Newport v. Newport Light Co., 84 Ky. 168.

New Orleans Gas Light Co. v. The City of New Orleans, 42 La. Ann. 188.

City of Memphis v. Memphis Water Co., 5 Heisk. 529.

Blood v. Manchester Electric Light Co., 68 N. H. 340.

Andrews v. National Foundry, 10 C. C. A. 60.

Kimball v. City of Cedar Rapids, 100 F. R. 802.

Santa Anna Water Co. v. Town of San Buenaventura, 56 F. R. 339.

Fergus Falls Water Co. v. City of Fergus Falls, 65 F. R. 591.

Los Angeles City Water Co. v. City of Los Angeles, 88 F. R. 720.

Los Angeles v. Los Angeles City Water Co., 177 U. S. 558.

Westerly Water Works v. Town of Westerly, 75 F. R. 181.

Defiance Water Co. v. City of Defiance, 90 F. R. 753.

Southwest Missouri Light Co. v. City of Joplin, 101 F. R. 23.

Little Falls Elec. & W. Co. v. City of Little Falls, 102 F. R. 663.

Insulated Water, etc., Co. v. Baltimore, 13 C. C. A. 378.

State ex rel. City of St. Louis v. La Clede Gas Light Co., 102 Mo. 472.

Livingston v. Pippin, 31 Ala. 542.

Rome v. Cabot, 28 Ga. 50.

Hale v. Houghton, 8 Mich. 458.

In re Pryor's Petition, 55 Kas. 724.

State ex rel. v. City of Great Falls, 19 Mont. 518.

Having power to make such contract, the mode and manner is entirely within the discretion of the municipality, so long as

the rates are fixed by ordinance, and the contract does not extend beyond thirty years.

Grant v. City of Davenport, 36 Ia. 390.
City of Portland v. Portland Water Works, 67 Me. 35.
Maine Water Co. v. City of Waterville, 93 Me. 586.
City of New Orleans v. New Orleans Water Works, 36 La. Ann. 432.
Ludington Water Supply Co. v. City of Ludington, 119 Mich. 480.
Utica Water Co. v. City of Utica, 10 Hun, 431.
City of Livingston v. Pippin, 31 Ala. 542.
New Orleans Gas Light Co. v. Louisiana Light Co., 115 U. S. 650.

The legislature having authorized the making of the contract between the city and the water company, it must stand unless attacked for fraud.

Tiedeman on Mun. Cor. 175.
Cooley on Con. Lim. 186-7.
15 Amer. and Eng. Ency. Law, 1046.
New Orleans Water Co. v. New Orleans, 164 U. S. 481.
Little Falls Electric Light Co. v. City of Little Falls, 102 F. R. 663.
Sherlock v. Village of Winnetka, 59. Ill. 389.
Dunham v. Village of Hyde Park, 75 Ill. 371.
Brush v. City of Carbondale, 78 Ill. 74.
Warren v. City of Chicago, 118 Ill. 329.
City of Newport v. Newport Light Co., 84 Ky. 108.
City of Memphis v. Memphis Water Co., 5 Heisk. 529.
Godson v. Winchester, etc., 12 Bush (Ky.), 114.
Von Ripen v. Jersey City, 58 N. J. Law, 262.

Where an ordinance is repealed, such repeal can not operate retrospectively to impair private rights vested under the ordinance.

Dillon on Mun. Cor., Sec. 314.
Thompson on Corporations, Sec. 5413.
Tiedeman on Police Power, Sec. 188.
Sinking Fund Cases, 99 U. S. 700.
Pacific Mail Steamship Co. v. Joleffe, 2 Wall. 450.
Tomlinson v. Jessup, 15 Wall. 454.
Pearsall v. Great Northern R. R. Co., 161 U. S. 673.
Holyoke Water Power Co. v. Lyman, 15 Wall. 500.
Close v. Glenwood Cemetery Co., 107 U. S. 466.
Douglas v. Kentucky, 168 U. S. 488.
Commonwealth v. Essex Co., 13 Gray, 213.

The property rights of the water company having been taken from it by the action of the State under the Act of 1891, and the ordinance of 1895, without any compensation paid therefor, it was deprived of its property without due process of law.

Henderson v. R'y Co., 21 F. R. 358.
Scott v. City of Toledo, 36 F. R. 395.
Baker v. Norwood, 74 F. R. 997.
Davidson v. New Orleans, 96 U. S. 102.
Kentucky R. R. Tax Cases, 115 U. S. 331.
C., B. & Q. R. R. v. Chicago, 166 U. S. 226.
2 Story on Constitution (5th Ed.), p. 676, at pp. 702, 703, Sec. 1956.
1 Hare's American Constitutional Law, 347–8.
Mount Hope Cemetery Co. v. Boston, 158 Mass. 509.
Harness v. C. & O. C. Co., 1 Md. Ch. Dec. 249.
Martin *et al., ex parte*, 8 Eng. (Ark.), 199.
San Diego Land, etc., Co. v. National City, 174 U. S. 749.

The cases relied on by cities and their inhabitants in attempting, under rate-revoking ordinances, to set up the doctrine of public control of corporations which are engaged in serving the public are cases which deal with such control in guarding the public *health, morals, convenience, safety, comfort, and*

status as to police regulations. Those things over which councils and legislative bodies do have a control are things within the scope of the term *police,* and not within the scope of the term *contract.* There is a difference here as wide as the conceptions of the law. Only when contracts are bound up in the operations of corporations which make against good police regulations can the city or the State interfere. The cases cited by counsel for John B. Fergus in the case of Rogers Park Water Company v. John B. Fergus, in the supplemental brief, to establish the right of legislative regulation upon corporations, are this case at bar, when in the Supreme Court of Illinois, and others purporting to sustain it, which are as follows:

N. O. Gas Co. v. La. Light Co., 115 U. S. 650, 672.
R. R. Co. v. Omaha, 170 U. S. 57, 72.
N. W. Fertilizing Co. v. Hyde Park, 97 U. S. 659.
Beer Co. v. Mass, 97 U. S. 25.
Stone v. Miss., 101 U. S. 814.

These cases do not bear on this subject of *contracts.* They are all relative to questions of *police.* They all deal with regulations as to *bad odors, threatened public safety, public inebriety, public gaming, etc.* The absolute weight of authority withholds the legislative hand from regulation of the terms of vested contract rights. Such regulation is allowed only when necessary *police* restrictions and duties are to be imposed.

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No. 343.

Ct. Brf. of Plaintiff in Error

for P. C.

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Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

Filed Nov. 26, 1900.

DANVILLE WATER COMPANY, ... Plaintiff in Error,

vs.

CITY OF DANVILLE, ... Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Additional Brief for Plaintiff in Error.

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No. 373.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

DANVILLE WATER COMPANY, . . . *Plaintiff in Error,*

vs.

CITY OF DANVILLE, ... *Defendant in Error.*

Error to the Supreme Court, State of Illinois.

Additional Brief for Plaintiff in Error.

This case is sufficiently stated in the brief of Mr. Davies. The errors assigned raise the question of the validity of the contract between the Danville Water Company and the City of Danville, the right of the State of Illinois to pass any law which would authorize the City of Danville to impair the obligation of this contract, the right of the City of Danville to pass any ordinance changing this contract; and they raise the further question as to whether such legislation, State and municipal, deprives the Danville Water Company of its property without compensation and without due process of law.

There are three cases which are being heard by this Court at this time from the Supreme Court of Illinois. The first of these is the case of the Rogers Park Water Company

vs. Fergus. This case involves the question as to whether a certain ordinance granting to the Rogers Park Water Company the right to establish water works, and fixing a rate of charges for public and private consumers of water, is not contractual in its character, to the extent that the subsequent admission of Rogers Park into the City of Chicago will not allow that City, by ordinance, to change the schedule of rates as to private consumers.

The next case is that of the Freeport Water Company vs. the City of Freeport, wherein is involved the question whether the City of Freeport, after having granted to an individual assignor of the Freeport Water Company the right to establish water works and use the streets for mains, and having prescribed duties to be performed in the distribution of water to the City and its citizens, and fixed a rate to be paid by the City for the public water supply, can impair this contract under subsequent legislative act or municipal ordinances.

This is the third case of the series.

Elaborate briefs have been filed on the hearing of all the cases, and the diligence and learning of counsel has been such that we believe substantially all authorities worthy of serious note have been cited to the Court. We will, therefore, in the course of this argument, not endeavor to cite cases in support of the propositions which we endeavor to maintain, but content ourselves with a simple statement of the legal issues here involved and the principles which should govern their solution.

The Parties Intended to Contract.

That the Danville Water Company and the City of Danville intended to make a contract cannot be questioned. The original ordinance (R., 5) is entitled as follows:

"An Ordinance providing for a supply of water to the City of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said Company for a supply of water for public use and giving said City or town right to purchase said works."

The first clause of this ordinance grants to the Danville Water Company for thirty years a franchise to construct and maintain within and near the City of Danville, water works for supplying the City and the inhabitants thereof with water.

The second section states the source of supply, prescribes the character of pump-house, pumping engines, stand pipe and mains which are to be erected and furnished by the Water Company. "The fire hydrants rented by said City as hereinafter stated, shall be of a design of appropriate style and good efficiency." A provision is made for test of the power and capacity of the water works on their completion.

The third section prescribes when the Water Company shall begin its construction and what shall be the progress made by it. The fourth section is devoted to prescribing regulations for the laying of mains. The fifth section prescribes when and where and under what circumstances the City shall have the right to require the Water Company to extend its mains. The sixth section prescribes the rates to be charged to private consumers.

The seventh section provides for the right of the City at the expiration of five, ten and twenty years, and at the expiration of thirty years, to buy the works with their privileges and appurtenances, at a valuation to be ascertained in accordance with the terms of the section.

Section 8 is as follows: "In consideration of the benefits which will be derived by the said City and its inhabitants

from the construction and operation of the said water works, and in further consideration of the water supply hereby secured for public uses, and as an inducement to said Water Company to accept the provisions of this ordinance and contract, and to enter into the construction of said water works, the rights and privileges hereby granted to and vested in said Water Company shall remain in force and effect for thirty years from the passage of this ordinance, and for the same consideration and the same inducement the City of Danville hereby rents of the Danville Water Company, for the uses hereinafter stated, 100 fire hydrants of the character hereinafter described, and for and during the term of thirty years from the passage of this ordinance, and agrees to locate them promptly along the line of the street mains as demanded of said Water Company, and in submission by it to said City of a plan of the location of said street mains, and agrees to use the said hydrants carefully, and to pay said Water Company for any injury which may happen to any of them when used by any officer, servant or member of the Fire Department of said City, and agrees to pay rent for said 100 hydrants at the rate of seventy-five ($75.00) dollars each per year; and agrees to pay during the unexpired term of said ordinance and privilege for any additional fire hydrants which the City may hereafter locate, at the rate of sixty-two and 50-100 ($62.50) dollars each per year for the next forty (40) additional hydrants; and for all hydrants in excess of one hundred and forty (140) at the rate of fifty ($50.00) dollars each per year, all of which sums will be paid by said City to said Water Company, beginning from the dates when each of such hydrants shall be put in successful operation, in quarterly installments on the first days of February, May, August and November of each year, and terminating on the expiration of said term of thirty (30) years, or upon the purchase of said

works and their privileges and authority by the said City." (R., 9–10.)

Section 9 of the ordinance prescribes how the fire hydrants rented by the City are to be used.

Section 10 provides that the Water Company shall constantly keep all fire hydrants rented by the City supplied with water and gives in charge to the Chief of the Fire Department of the City, these fire hydrants, and provides that the City may, where the fire hydrant is out of repair deduct from "said hydrant rental account" a certain sum.

In the 11th section the Water Company, in consideration of the City renting such number of fire hydrants, agrees to gratuitously furnish certain drinking fountains and also water free for City offices.

The 12th and 13th sections need not be noticed. The 14th provides as follows:

> "This ordinance will become binding as a contract upon the said City of Danville in the event that the said Danville Water Company shall, within ten days from the passage of this ordinance, file with the City Clerk of said City its written acceptance of the terms and conditions of this ordinance, and upon such acceptance this ordinance shall constitute a contract and shall be the measure of the rights and liabilities of the said City and the said Water Company."

Within this ten days the Danville Water Company did accept the terms, obligations and conditions of the ordinance. It proceeded to erect its plant and to furnish water to the City.

Various ordinances were passed after the main one providing for the extension of the pipe system of the Danville Water Company, and contracting with it for additional public

fire hydrants. Sometimes the language "contracting" is used and sometimes the language "renting" is used.

(R., 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 31.)

There is in the case no dispute of any fact, the whole matter being an issue of law. We have said enough we think to establish the first position beyond controversy, *i. e.*, that the City of Danville and the Danville Water Company did contract. The terms of the contract are without ambiguity or uncertainty, definite in point of time, in point of reciprocal services and obligations, and in point of money consideration to be paid by the City of Danville to the Danville Water Company, and of plant to be erected and maintained by the Danville Water Company.

Our second proposition is:

That the Parties Had the Right to Make This Contract.

That the Danville Water Company had the right upon its side to make the contract is not disputed. Did the City of Danville have such right? We can not do better than state the authority granted to the City of Danville by the Legislature of Illinois to make this contract, as set forth in the opinion of the Supreme Court of Illinois in the City of Danville vs. Danville Water Company, 178 Ill. At pages 308 and 311 the Court says:

> "By an Act, approved April 9, 1872, in force July 1, 1872, entitled 'An Act to enable cities . . . . to contract for a supply of water for public use and to levy and collect a tax to pay for water so supplied, it was provided in Sections 1 and 2 as follows:' (1) 'That in all cities . . . . where water works may hereafter be constructed by an

incorporated company, the city . . . . authorities of such cities . . . . may contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years.' (2) 'Any such city . . . . so contracting may levy and collect a tax on all taxable property within such city . . . . to pay for the water so supplied.'"

"This Act of April 9, 1872, conferred on cities the power to contract with an incorporated company for a supply of water for public use for a period not exceeding thirty years. No question is made by either party to this litigation as to the validity of this Act so far as it gave the right to contract for thirty years. Counsel for the City disclaim any intention of questioning the validity of a contract to supply water for thirty years. Therefore we pass no opinion upon this question. The contention is that the City had no power to make a contract to pay fixed and unalterable rates for thirty years, and not that the City did not have power to make a contract with the water company that the latter should supply water for thirty years."

We quote now from page 311 of the same opinion:

"In Section 1 of Article 10 of the City and Village Act, approved April 10, 1872, it is provided as follows:

"'The City Council . . . . shall have the power to provide for a supply of water . . . . by the construction and regulation of . . . . water works, and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance and for a period not exceeding thirty years.'"

Admitting that these two Acts should be construed in *pari materia*, we have the authority granted to the munici-

pality by the Legislature in the one Act to contract with such incorporated company for the supply of water for public use for a period not to exceed thirty years, and in the other Act a legislative authority is given to the municipality "to authorize any person or private corporation to construct and maintain the same (water works) at such rates as may be fixed by ordinance and for a period not exceeding thirty years."

There is a distinction running through the books, which is too well established to be controverted, between the legislative power belonging to a municipal corporation and the power granted to it to deal with its ordinary business interests. There is confided to a municipality a large degree of police authority, an authority to so regulate the community within its boundaries as will induce good order, health and sound morality. But besides this, of necessity, a municipal corporation must and does have the right to enter into contracts for the supply to itself and the citizens those things which must be supplied by the public, or through a contract made with the public rather than by individual effort. Among these are: protection from fire, the establishment of a department for this purpose, the purchase of engines and other apparatus; the supply of light and the supply of water. In reference to these last it is impossible for any individual, without a public franchise, to answer the necessities of the community. The supply of light and water require the use of the public highways, and the City is under the same necessity to have for itself water and light as is the individual member of the community. A municipality, therefore, must have the two kinds of authority. The one, for the want of a better term, we may designate legislative, the other, contractual.

When we come to consider whether a municipality has power to contract upon a given subject, there is no reason

why its warrant of attorney from the Legislature should be construed in any different way from that which it would be construed if we were dealing with any other business corporation. It is one thing to say that a franchise granted by the Legislature, either directly or through a municipality, should be strictly construed and not extended beyond a fair meaning of the language employed in the grant, but there is no such reason for applying this rule when we come to construe the power of the municipality to make contracts which are essential to its own well being and that of the community governed by it.

When an individual or corporation is invited to enter into such a contract as the one now before the Court, such individual or corporation has the right to regard the authority conferred upon the municipality by the Legislature as not bound down by artificial or rigid or narrow rules of construction, but by such rules as would, to ordinary intelligence, interpret the meaning of the language used in granting the power to contract.

In the case at bar the Danville Water Company has invested a large amount of money in the erection of water works in and near the city of Danville. Its plant is of the character prescribed by the City of Danville, and has undergone the test of completeness and efficiency laid down by the governing authority of the City. Obviously no business man would have engaged in an enterprise involving so great an outlay of capital without considering the question as to what return he was to receive for his investment. Two things would be looked into. One, the length of time for which he was to enjoy the public franchise; second, what was to be the return to him for his outlay during this period of time. His return would come from two sources—water supplied to the municipality, and water supplied to the citizens. In refer-

ence to the last there could be no certainty as to the return.

No obligation could be imposed upon any individual citizen to become a patron of the Water Company at all, or, if he should become a patron, no obligation could be imposed upon the individual citizen to become such for any definite amount or definite length of time. But the municipality could secure to the investor some return from itself for the capital employed in the enterprise. It could agree, if it had the authority so to do, to take a definite amount of water for a definite length of time and at a definite price. The last would be obviously as important as either of the other two.

Undoubtedly there was authority in the City of Danville to agree for the term fixed in this contract, thirty years. No one disputes that. No one, so far as we know, disputes its right to fix the amount of water it would take during this definite term. The only dispute is as to its right to agree upon the rate it would pay.

If we take the first Act referred to by the Supreme Court of Illinois, where the authority is granted "to contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years," one could hardly doubt that this language meant to embrace authority for all of the usual elements of such contract. Surely it was not meant to give to the City of Danville the right to contract for a supply of water and to prohibit it from fixing what that supply should be. Surely it was not meant that while it could agree to have some water supplied for as long a term as thirty years, it could not agree as to how much water was to be supplied to it during this period. But if it is obvious that it could contract for a definite supply for a definite term, it is certainly a most strained construction to say that it could not contract as to how much it should pay for such supply for such definite term. In other words, that it was so

hampered that it could not agree as to the price, when it could agree as to the amount and time.

It may well be that knowing there was a certain profit to the Company in supplying the citizens, the City desired to take advantage of this fact to contract that the water furnished to it should be furnished at a lower rate than the Company could afford to furnish it if there were to be no other customers.

We take the liberty of stating an instance of this within our own knowledge. The Louisville Gas Company was, in the year 1888, granted the exclusive privilege of furnishing gas to the City and citizens of Louisville, and the price at which it should furnish the citizens was fixed. As to the City, it was provided that gas should be furnished to it at cost, and the right of the City to have street lamps put along its highways at different points was amply provided for. Here, then, is an instance where the Legislature secured from a private corporation a bargain obviously favorable to the municipality, because the corporation, the enterprise not being a new one, believed that it could, out of the price which the private consumers were to pay, make enough profit to enable it to furnish a large proportion of its product to the City without any profit at all. We think, therefore, that one could not doubt that ordinarily the right given to a corporation to contract for a supply of water for public use for a period not exceeding thirty years, would involve not only the right to contract for the time during which the water should be supplied, but also the amount of water and the price.

But let us turn to the other authority which the Supreme Court of Illinois properly says is to be read in *pari materia*. There the municipality is authorized to provide for a supply of water by the construction of water works, and is further empowered "to authorize any person or private corporation

to construct and maintain the same at such rates as may be fixed by ordinance and for a period not exceeding thirty years." Here, too, the question of amount is not stated in the authority. Power is given to fix the period and to fix the rate, but, obviously, as we have argued, the Council must have had the right to fix the amount of water to be furnished. What meaning, then, ought we to give the words, "at such rates as may be fixed by the ordinance?" Are they to be construed as meaning, "as may be fixed by ordinance from time to time," or, "as may be fixed by ordinance for a period of time not exceeding thirty years?"

The Danville Water Company came to contract with the City of Danville. It found that it had authority to contract for a supply of water for a period not exceeding thirty years and to contract for a supply of water at such rates as might be fixed by ordinance. Thereupon, in perfect good faith, both parties agreed upon a contract which fixed by ordinance the amount of water to be furnished to the City, the time for which it should be furnished to the City, and the rate at which it should be furnished to the City. Now, the Supreme Court of Illinois, in 178 Ill., p. 312, says that this language "at such rates as may be fixed by ordinance" means at such rates as may from time to time be fixed by ordinance. It is obvious that it is only by interpellation that such construction can be given to this language. Upon its face it bears no such construction. Upon its face it is a direct legislative grant of authority to the City Council to contract for a period of thirty years at a rate to be fixed by ordinance.

We submit that we have shown that the first Act, while giving direct authority to contract for a period of thirty years, by necessary implication gives the authority to contract for the amount of water to be supplied and the price at which it should be supplied. The second Act, we submit, expressly

authorizes the City to contract for a period not exceeding thirty years, and to fix the rate and, by necessary implication, to prescribe the amount of water it will pay for. It is a curious result that the giving of the express right to fix the rate by the second Act is made by the Court the occasion for limiting the power of the municipality within narrower bounds than such authority would have existed under the first Act, which does not mention the rate at all.

In conclusion upon this point we respectfully submit that no person having this warrant of authority before him could have supposed that it would permit the interpretation now put upon it by the Court, or that its effect would prevent the City Council from bargaining for a fixed rate during the entire term of the contract. If the City were to deal upon business principles such a power was manifestly essential.

The Water Company may well have agreed to take a rate during the first few years less than a reasonable rate, upon the idea that such rate through the whole term would be a reasonable rate. And, again, the City amply protected itself from imposition by retaining the right to purchase the plant at any time after five, ten and twenty years, as well as when the contract would, by its terms, expire. The insertion of the words "from time to time" is interpellation and not interpretation, is reconstruction and not construction.

Reasons For Holding That the Contract Was Invalid.

The learned Court seems to lay great stress on the argument that this contract must be regarded as invalid and beyond the power of the City of Danville, because it was the bargaining away of the legislative power of future councils. We have heretofore adverted to the difference between the legislative and contractual power of a municipal coun-

cil. The briefs on file cite many authorities pointing out this distinction, and also many authorities showing that, under language nothing like so broad as this, municipalities have been adjudged to have power to contract for long periods of time for lighting the highways and for supplying water to the public and individuals.

This Court has held that the Legislature can establish a monopoly in a bridge, in a water company, in a gas company; can, if words are aptly chosen, disable itself from regulating the rates of fare and freight of public carriers, and exempt property from taxation or commute such taxation. All these are instances which would fall strictly within what the Supreme Court of Illinois seems to consider as bargaining away of legislative power. It is, however, a misnomer to speak of a contract made, either by a State or a municipality, running for a term of years, by which it contracts to pay upon the one hand, and the other parties contract either to labor or supply for a definite time, as bargaining away of legislative power. There is to us no distinction between bargaining away the power of a future Legislature or Council and the bargaining away of the power of the present Legislature or Council. In other words, there is no reason why the Legislature or Council can not so contract as to bind a future Legislature or Council, if it can so contract as to bind itself in its own future legislation.

There are certain things which cannot be bargained away, involving, as they do, such duties to society that no contract can interpose itself against their fulfillment. The public health, public safety, public morals, all these are subjects upon which both legislatures and city councils must be free, from time to time to deal, and it has everywhere been recognized that neither legislatures nor city councils can disable themselves from passing such laws or ordinances on these

subjects as public emergency may exact. But these subjects have, by the courts, been excepted out of the general rule appertaining to legislation, and form no basis for an argument in a case where what has been done was in the interest and necessary advancement of the health and convenience of the community.

The learned Court seems to admit that it was competent for the City of Danville to contract for thirty years and make a grant of an easement in its highways to this Water Company for that length of time, and we find no objection made to this contract in so far as it fixes the amount of water which the City shall buy annually from this Company. The only fault is in the amount which it shall pay from time to time. But where is the distinction between bargaining away the right of future councils to control the highways and to control the amount of water which the City will take from this Company, and bargaining away the right to fix the amount that is to be paid for this supply of water.

Has This Contract Been Lawfully Changed or Abrogated?

We have thus far considered, first, that the City of Danville and the Danville Water Company intended to contract. Second, that the City of Danville had authority to contract, and, third, that the contract was not invalid as being an unlawful abrogation of legislative authority. It now remains to consider, assuming that this was a valid contract when made, did the City of Danville have the right to change its terms by prescribing a different amount which it should pay for the water supplied to it from that contained in the original contract?

The Danville Water Company was formed under the General Incorporation Laws of the State of Illinois. Section 9 of that law provides as follows:

> "The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding upon any and all corporations formed under the provisions of this Act." (1 Star & Curtis Annual Statutes, 2 ed., p. 1006.)

The contract here sued on was made November 11, 1882, and the various supplemental contracts between that date and October, 1894. All of the supplemental contracts, however, are based upon and issue out of the provisions of the original contract.

On June 6, 1891, the Legislature of Illinois passed an Act which is given in full on page 34 of Mr. Fry's brief, counsel in the Freeport Water Company case.

This Act provides that "the corporate authorities of a city . . . . of this State in which any corporation has been, or hereafter may be, authorized by such city . . . . to supply water to such city . . . . and the inhabitants thereof, be and are hereby empowered to prescribe by ordinance maximum rates and charges for the supply of water furnished by such . . . . corporation to such city . . . . and the inhabitants thereof, such rates and charges to be just and reasonable."

It was under the authority of this law that the City of Danville passed the ordinance relied on by it herein, and which is dated January 19, 1895. (R., 88.) This ordinance reduces the rates to be paid by the City for the fire hydrants below the price fixed by the original contract.

That this legislation of the State of Illinois and this ordinance violates the obligations of a contract and deprives

the Danville Water Company of its property without due process of law, is a proposition which must necessarily be maintained by us if we succeed in reversing the judgment of the Supreme Court of Illinois. All other questions raised by the pleas of the City of Danville have been eliminated by the Supreme Court of Illinois. (The City of Danville vs. Danville Water Company, 178 Ill., 315, and same vs. same, 180 Ill., 244, where the demurrers of the fourth and fifth pleas are disposed of.) The third plea, that of tender, was abandoned. (City of Danville vs. Danville Water Company, 178 Ill., 303, at bottom of page.)

The learned Supreme Court does not seem to be exactly agreed as to whether the Act of 1891 is to be considered as an amendment to the charter of the Danville Water Company. Some language used in the first opinion (178 Ill., 306) might be construed as holding that it did operate as an amendment. On the contrary, the first part of the opinion in 180 Ill., 241, seems to positively oppose this view, while the opinion *per curiam* in Freeport Water Co. vs. City of Freeport, 186 Ill., 179, would seem again to support such a contention. But this is not very material. The question at last is, whether under the language quoted it was competent for the Legislature of the State of Illinois to authorize the City of Danville to pass the ordinance in question, and as to whether this ordinance was valid.

The ordinary power which is reserved by the Constitution or statutes of the various States to alter, amend and repeal the charters of corporations has never, so far as we are aware, been construed to mean that the Legislature, after authorizing a corporation to make a particular kind of contract, and after such a contract had been made, can repeal the contract, or abrogate it or prevent its enforcement. The question as to whether the charter of a corporation can be taken away from

it, its authority to conduct any business cancelled or limited, and restrictions upon its power to contract enlarged; all these are questions totally distinct from the right of the Legislature, after a corporation has made a contract under authority, to interfere with such contract and license its violation.

We suppose it would hardly be contended in reference, say, to a banking corporation, that the Legislature, under a reserved power to alter, amend or repeal its charter, could provide that the notes given to the bank for money loaned by it, or the security taken for obligations of its debtors, should cease to be valid or obligatory. And the same is true in reference to property acquired or contracts made by any other corporation. The Legislature having reserved to itself power, may prevent the corporation from acquiring additional property or making new contracts, but under the power reserved to repeal, alter or amend articles of incorporation, it has never been contended, so far as we know, that contracts in existence when the Legislature exercises this power are in any way affected by such exercise. This would not only be the palpable violation of the obligations of a contract, but it would be the taking of private property for public use without compensation. The Legislature has the right to limit the power of individuals to contract, it has the right to make contracts which are innocent to-day, unlawful to-morrow, but when the individual has made a contract, lawful at the time it is made, the Legislature cannot, by the exercise of any power, probably excepting the police power, prevent the enforcement of this lawful contract. The power which the Legislature reserves of repealing, altering or amending charters, is not different in principle from that which it has over the dealings of private individuals. It no doubt is larger because the Legislature can, under such reserved power, repeal an act of incorporation and thereby prohibit the cor-

poration from making any new contracts of any kind whatever, whereas the Legislature cannot absolutely prohibit an individual from making contracts.

Ordinarily an individual is *sui juris* and capable of making contracts when he is twenty-one years of age. We know of no constitutional objection to any State passing a law saying that after a named date no one shall be capable of contracting who is not twenty-four years of age. But surely the Legislature could not say that contracts made before such a law took effect by persons over twenty-one and under twenty-four were invalid, or that notes given for money loaned, or securities taken or property otherwise acquired should become forfeited to the State.

So much then for the contracts of corporations not engaged in a public or *quasi*-public business and the contracts of individuals. What greater power now has the Legislature over the present and future contracts of persons or corporations engaged in a public or *quasi*-public business? Has the Legislature fuller power to interfere with contracts already made by corporations of this character, or individuals engaged in this character of business, than it has over contracts already made by individuals or corporations engaged in private business?

The language of the Act we are discussing is this: "The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding upon any and all corporations formed under the provisions of this Act." There is here no power to repeal a charter that has been formed under this Act, nor to alter it, nor to amend it. There is simply the power to prescribe regulations and provisions such as the General Assembly may deem advisable and the statement that such regulations and provisions shall be

binding upon all the corporations formed under the provisions of this Act.

The character of regulations that may be prescribed are well stated on pages 94 and 95 of Mr. Fry's brief, and the character of regulations which could not be made. Coming, however, to a public corporation formed under this Act, such as a gas company, water company, telephone company or electric light company, the business of all these corporations has been held by the courts to be *quasi*-public and subject to certain regulations. We suppose there is no sound distinction between the right of the Legislature to regulate the charges of a gas company, a water company, an electric light company and of an elevator company, but even in these cases there is not an unlimited power to regulate.

There is no more reason for saying that the rates of freight and fare to be exacted by a railroad can not be reduced below a certain limit without violating that provision of the Constitution which prohibits the taking of private property without compensation, than there is to say the same thing in reference to regulations of these other companies.

The question at bar is: Can these regulations be made retroactive? Can a corporation of a *quasi*-public character be deprived of the benefit of a contract which it has made by an Act which shall regulate the charges it is to be allowed thereafter to make? A railroad company chartered by the State, without any right to regulate its own charges of fare and freight, is so far under the legislative control that these charges can be fixed, in some way, by some legislative or judicial body, or both combined, provided such rates are not by the public body, legislative or judicial, made confiscatory in their character. But take the case of a railroad so chartered which has, under the authority granted to it by its

charter, made a contract for transportation of persons and property, which contract is in part executed, and in part to be executed, can the Legislature apply its new rate to such a contract?

Suppose that the State of New York, when about to erect its Capitol, had agreed with the New York Central Railroad Company to transport all of the material to be used in the erection of that building at a certain rate. Obviously the Legislature would have had the power to do that, the same power that it would have had to purchase the necessary material. It might have been wise to let a David gather and a Solomon build. Now, assuming that the New York Legislature had the power to regulate the fare and freight of the New York Central Railroad, could it be claimed that after making this contract it could provide that thereafter the New York Central Railroad should not charge any individual or corporation, or the State itself, more than a certain rate and apply this to its existing contract?

In the case at bar we have a contract made by the City of Danville and the Danville Water Company to last for thirty years. This contract was made in 1882 and will expire in 1912. We will assume that the Danville Water Company agreed upon a rate at which it would furnish the fire hydrants less than what was then a reasonable rate, because it believed that taking the whole period through the rate would be reasonable. This contract having been thus lawfully made, authority having been reposed by the State in the Danville Water Company and the City of Danville to make this contract, can the Legislature, under the power to prescribe such regulations and provisions as it may deem advisable and make them binding upon any and all corporations formed under the provisions of its General Incorporation Act, give to the City of Danville the power to abrogate this con-

tract and fix or name a price which it is to pay the Danville Water Company? The existence of such a power has, so far as we know, never been before asserted.

In all the cases which have been before this Court upon the right of the Legislature of the various States, or commissions formed under their authority, to regulate rates of public and *quasi*-public companies, there has been thus far no suggestion that there was a power to interfere with any contract in reference to these rates which had been lawfully entered into prior to their attempted regulation. It will certainly, we submit, be a very wide extension of this power to declare that it shall exist not only for the future, but that there is in it the potency of controlling transactions which have been entered into in good faith and with lawful authority prior to the time the new regulations are enacted.

We respectfully submit, therefore, that there is no ground upon which this Act of the Illinois Legislature and this ordinance of the City of Danville can be distinguished from other efforts to repudiate and abrogate contracts which have been entered into between parties capable of contracting, which were valid when they were made and against which no suspicion of fraud or unfairness can be raised.

Respectfully submitted,

ALEXANDER POPE HUMPHREY,
Of Counsel.

WILLIAM WATKINS DAVIES,
ALEX. POPE HUMPHREY,
Counsel.

No. 373.
Petition for Rehearing.
MAY 13 1901

Filed May 13, 1901.

IN THE SUPREME COURT OF THE UNITED STATES.

Supreme Court of the United States.

373.

DANVILLE WATER COMPANY, . . . *Plaintiff in Error*,

vs.

CITY OF DANVILLE, ... *Defendant in Error*

PETITION FOR REHEARING.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Danville Water Company, plaintiff in error in a certain cause, No. 373 on the docket of the present term of this Court, decided March 25, 1901, would respectfully ask a rehearing therein.

1. The principal matter in controversy is the statutory authority of the City of Danville to make the contract sued on. The existence of this statutory authority depends upon the true construction of the Act of April 9, 1872:

> "The City Council . . . shall have power to provide for the supply of water . . . by the construction of water works, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years."

Such is the language of the Act. It is construed to mean the same as it would mean if it read:

> "And to authorize any person or private corporation to construct and maintain the same at such rates as may *from time to time* be fixed by ordinance, and for a period not exceeding thirty years."

2. It is argued in favor of this construction that the Legislature could reasonably vest in the City Council the right to regulate the rates of water from time to time.

In delivering judgment in the case of Trustees of Clyde Navigation vs. Laird, L. R., 8 App. Cases 668, Lord Blackburn said:

> "But though I think the reasonablensss of a scheme is a very good reason for thinking that the legislature might have wished to adopt it, and therefore for construing the words used as showing an intention to carry it out, if the words used will bear such a sense, it affords no justification for introducing new words or construing the words used in a sense which they cannot bear."

3. All rules of construction are meant to subserve a single purpose; which is to give effect to the meaning of what is the object of construction. This meaning is often well ascertained by considering what has been the

conduct of those whose acts were induced by their belief as to this meaning.

In the twenty years from 1872 to 1891 water works were built by private individuals or private corporations in very many towns and cities of Illinois. Since 1891 we believe all water works have been built by the public authorities. The reason for this change is easily found.

Up to 1891 it was not doubted that cities and towns had the right to contract with private individuals and private corporations for a supply of water at definite rates, and for a definite period, and thus assure to the investor a return for the outlay. Since 1891 it has been known that under the authority given by the Legislature the City Council could at any time change the rates. The fact that private individuals and private corporations did enter into contracts with city councils under the Act of 1872, and erect water works under such contracts, and the fact that such city councils did contract for a supply of water at fixed rates and for definite terms, is strong if not conclusive evidence that both parties to these contracts believed the law justified their entering into them. The private individual or the private corporation did not mean to put at hazard capital and labor without some fixed return being assured. Certainly the private individual or private corporation believed the city council was bound by its contract.

It must be assumed that the City Council entered into the contract in good faith and believed that it had the right to do so. Certainly the City Council did not have an undisclosed purpose of claiming lack of authority.

Again, not until 1891 did the Legislature pass an Act in terms granting the power to regulate the rates. If the Legislature believed that the power to regulate rates inhered in the Act of 1872, could be read into it by the interpellation of the words "from time to time," although no such words are there, then there was no occasion for the Act of 1891 at all.

This process of inquiring what the private individual or private corporation, the city council, the Legislature, supposed was the meaning of the Act of 1872; this examining into the conduct of the parties is simply an effort to arrive at the true construction by showing the practical construction of the statute.

4. This Court has many times given great weight to this practical construction:

> "It is a settled doctrine of this Court that in case of ambiguity the judicial department will lean in favor of a construction given to a statute by the department charged with the execution of such statute, and if such construction be acted upon a number of years, will look with disfavor upon any sudden change whereby parties who have contracted with

the government upon the faith of such construction may be prejudiced." (Mr. Justice Brown in United States vs. Alabama R. R. Co., 142 U. S. 621.)

5. In construing the meaning of this Act of 1872 we should not regard it as if it were the language of the charter of a private corporation. Such a charter, as is well known, is usually drawn by the counsel for the company, and sometimes contains language susceptible of great scope.

This Act of 1872, however, applied to all city councils, and its interpretation became the duty of many lawyers. The fact that all concurred in giving the same meaning to it is certainly most persuasive that this was its true meaning. And there is the less room for endeavoring to narrow its meaning by the interpellation of words which are not contained in it.

This is more obvious when the interpellation of these words gives the statute a meaning which is contrary not only to its letter but to its spirit. We respectfully submit that any lawyer whose duty it was to consider the power of a city council, under the Act of 1872, to contract for a supply of water at a fixed rate for a period not exceeding thirty years, would say that language could hardly be chosen that would be more apt in giving the power of contract to the city council. And the same is true in regard to those called upon to advise

whether the securities of corporations, dependent for their value upon the integrity of the contracts, had a stable basis.

> "When the good faith of all the parties is unquestionable the courts will lean to that construction of the statute which will uphold the transaction as consummated." (Provident Trust Co. vs. Mercer Co., 170 U. S. 600.)

6. If it be assumed that the City of Danville had the right to enter into the contract sued on with the Danville Water Company, binding itself to take the supply of water at the price therein fixed for the time therein designated, it would hardly seem possible that the Legislature could thereafter, under a power to prescribe, in the government of corporations, "such regulations and provisions" as it may deem advisable, vest in the City of Danville the right to change this contract.

A corporation may, if the Legislature has reserved authority over it, be deprived of the power to make new contracts. But thus far we know of no case which has held that after a corporation has, under authority of law, made a contract, the Legislature can abrogate this contract. In other words, if the Danville Water Company had made a contract with a private individual to furnish him a certain quantity of water at a certain price for a certain time, the power of the Legislature, reserved

in the terms given above, would not enable it to interfere with this contract.

A bank which is chartered by the Legislature might be prohibited from lending a greater than a prescribed amount of money to a single customer, but the Legislature could not interfere with a transaction of lending which had already taken place. In other words, the power which is reserved to the Legislature of regulation has never extended to the avoiding of contracts already made by the corporation.

In the case at bar, if we are right in supposing that the City of Danville and the Danville Water Company had authority to enter into the contract sued on, the right of the Legislature to prescribe "such regulations and provisions" as it may deem advisable, could not be held to give to it the authority to confer power upon the City of Danville to abrogate this contract.

Contracts made subsequent to the passage of the Act of 1891 would of course stand on a different footing, but those made prior thereto, it would seem to us, must remain in their integrity.

In the various cases which have been brought to this Court, involving the power of the Legislature to regulate the compensation to be paid to public companies for service, no one has yet justified the imposition of a new rate in place of an existing contractual rate. No

case, in other words, has gone so far as to hold that the Legislature, notwithstanding the public company has entered into a contract for a given service, during a given time and for a given consideration, can alter either the time for which the contract is to run or the amount of service or the amount of compensation. Your petitioner would respectfully submit that it is entitled to have its contract carried out according to the belief of both parties when it was entered into.

Your petitioner prays for permission to be heard in a re-argument of this cause, and as in duty bound will ever pray.

WILLIAM W. DAVIES,
ALEX. POPE HUMPHREY,
Counsel for Petitioner.

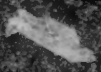
We certify that in our opinion the foregoing petition for rehearing is well founded.

WILLIAM W. DAVIES,
ALEX. POPE HUMPHREY,
Counsel.

In the

Supreme Court of the United States.

October Term A. D. 1900.



THE DANVILLE WATER COMPANY,

vs.

CITY OF DANVILLE,

Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

THE DANVILLE WATER COMPANY *vs.* CITY OF DANVILLE.	Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

JOHN H. LEWMAN,
City Attorney,

GEORGE F. REARICK,
Attorneys for Defendant in Error.

STATEMENT OF THE CASE.

In the Circuit Court of Vermilion County, Illinois, the Danville Water Company filed its declaration in an action in assumpsit against the City of Danville, to recover for the rental of one hundred and fifty-eight fire hydrants, for a period of three months from May 1st, 1895, to August 1st, 1895.

The declaration consists of a single count, and in it certain ordinances are set forth *in hæc verba*, passed at various times from Nov. 11th, 1882, to Oct 18th, 1894, in and by which the Water Company claim that the city contracted to pay for said hydrants certain rentals at various rates, aggregating for said period the sum of $2,620.62.

To this declaration two pleas are interposed by the city, which profess to answer only, as to all claimed in the declaration, except $1,930, parcel, etc.

The final action of the lower courts of which the Danville Water Company complains, is that it was held below, that these pleas were good as to what they professed to answer, and that the judgment in its favor was for but $1,930, when it should have been for $2,620.62.

The pleas were demurred to, the demurrer was overruled, and plaintiff in error excepted, and stood by its demurrer, and judgment passed accordingly for $1,930, the amount confessed by the pleas.

An appeal being perfected to the Supreme Court of the State of Illinois, that judgment was affirmed, and it

being now alleged that by this judgment the Supreme Court of the State gave effect to a law and an ordinance which violated the obligation of a contract, and which had the effect of taking the property of the Water Company without due process of law, the case is brought to this court for further review.

A full statement of all the facts is found preceding the decisions of the State Supreme Court, reported in the official reports in the 178 Ill. 299, and 180 Ill. 235.

In the trial court there were originally two cases, differing in no material respect; the only difference being that each covered a different quarter's rental.

In the Supreme Court of the State the two cases were consolidated, and the judgments affirmed, the opinion being found in the 186 Ill. 326. This is the judgment brought to this court for review.

The defense set up by the first and second special pleas is, that the original ordinances set out in the declaration, in so far as they undertook to fix unalterable rates for thirty years were *ultra vires*. That said original rates were, at the time they were fixed, and now still remain exhorbitant and excessive, and exceed a reasonable compensation for the service rendered. That the said City Council of the city of Danville, in view of these facts, on January 19th, 1895, passed an ordinance to take effect May 1st, 1895, by which said hydrant rental was fixed at a different rate, aggregating for said 158 hydrants for said quarter, $1,930. This ordinance is known and designated as Ordinance No. 517, which designation may serve to make more brief the references thereto. That the Water Company was within five days served with a copy of said ordinance, and that an offer was made by the city to enter

its appearance at once in court, if it was desired on the part of the Water Company, to test the question of the reasonableness of the new rate. That said new rate is reasonable and just, and is a fair and reasonable compensation for the service rendered. That said company furnished the water in question with knowledge of all said facts and with due notice. That the said city was authorized by an Act of the General Assembly of the State of Illinois, approved June 6th, 1891, as well as by other competent and legal authority, to pass said Ordinance No. 517.

The demurrer to these pleas is general, and assumes that the laws of the State of Illinois in force at the respective dates of the passage of the ordinances set out in the declaration, authorized the city to pass an ordinance fixing rates for thirty years, and that the city and company had a right under the law to contract for a definite rate, for that length of time; and that the State could not, so long as that alleged contract was in effect, resume its right to legislate on the subject of water rates, as between the city and company.

The plaintiff in error therefore draws the conclusion that the Act of 1891 and Ordinance No. 517 impair the obligations of the several contracts set out in the declaration, and deprive it of the benefits of such contracts without due process of law.

The answer of the defendant in error is that the laws of the State of Illinois did not give the city and Water Company *power* to so contract, and that such alleged contracts are *ultra vires*, and of no binding effect.

The dates of the respective ordinances and the number of hydrants rented, and the rates fixed, as set forth in the declaration are as follows, viz.:

Nov. 11, 1882,	100	hydrants	at	$75.00	$7,500.00
June 7, 1883,	1	"	"	62.50	62.50
Aug. 7, 1884,	2	"	"	"	125.00
April 1, 1885,	4	"	"	"	250.00
June 19, 1890,	5	"	"	"	312.50
Aug. 20, 1890,	3	"	"	"	187.50
	115				$8,437.50
Sept. 3, 1891,	3	"	"	62.50	187.50
Nov. 5, 1891,	1	"	"	"	62.50
Oct. 20, 1892,	2	"	"	"	125.00
" " "	19	"	"	50.00	950.00
June 21, 1894,	12	"	"	40.00	480.00
Oct. 18, 1894,	6	"	"	"	240.00
	158				4)$10.482.50
				Total for 3 months	$2,620.62

One hundred and fifteen of the hydrants were rented by ordinances passed prior to the Act of 1891, and forty-three hydrants subsequent thereto.

Ordinance No. 517 establishes the rates as follows:

For 140 hydrants	at	$50		$7,000.
" 18 "	"	$40		720.
			4)	7,720.
		For the quarter		$1,930.

On the one hundred and fifteen hydrants rented prior to the Act of 1891, all the rates are reduced.

On the forty-three hydrants rented subsequent thereto, a reduction is made on the first six, and the thirty-seven remain as fixed in the ordinances set forth in the declaration.

The City of Danville, it is shown by the pleadings, is a municipal corporation organized under the general laws of the State of Illinois, and the claim that it has power to

contract and fix unalterable rates, as to the first 115 hydrants must be based upon two statutes passed respectively April 9th and 10th, 1872, and which for brevity sake may be referred to as the *Law of 1872*.

As to the remaining forty-three hydrants, the ordinances renting them were passed subsequent to the enactment of the statute of June 6th, 1891, which for brevity will be referred to as the *Law of 1891*, and hence the power to contract as to them must be considered in the light both of the *Law of 1891* and the *Law of 1872*.

The Danville Water Company is a corporation organized under the general laws of that State with reference to corporations, passed April 18th, 1872, which laws contain a reservation to the State, which will be designated as *Sec. 9 of the Corporation Act*.

Leaving out all words not applicable to this case the *Law of 1872* provides as follows:

I.

In all cities where water works may be hereafter constructed by an incorporated company, the city authorities may contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years.

(1 Starr & Curtis Stat. page 865, Sec. 450.)

II.

The City Council shall have the power to provide for a supply of water by the construction and regulation of water works and to borrow money therefor, and to authorize any person or private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years.

(1 Starr & Curtis Stat. page 785, Sec. 175.)

The Law of 1891 provides that the corporate authorities of any City in which any corporation has been or hereafter may be authorized by such City to supply water to such cities and the inhabitants thereof, be and are hereby empowered to prescribe by ordinance maximum rates and charges for the supply of water furnished by such corporation to such City and the inhabitants thereof, such rates and charges to be just and reasonable.

(1 Starr & Curtis Stat. page 868, Sec. 458.)

Sec. 9 of the Corporation Act provides that, the General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations and provisions shall be binding on any and all corporations formed under the provisions of this act.

(1 Starr, Curtis Stat. page 1006, Sec. 9.)

The issue of law in this case in the State court was, what under the foregoing statutes, had the City and the Water Company, to contract, on the point of fixing a rate definite and unalterable for a term of thirty years. No other provisions of the ordinances relied on by the Water Company are drawn in question by the City, in this case.

And as we understand counsel for the Water Company, they rest themselves first upon the proposition that said statutes did give power to the City and Water Company to so contract, and secondly that Sec. 9 of the corporation act reserved no right to the State to legislate on the subject of water rates, which could apply in this case.

Plaintiff in error now asks this court to reverse the Supreme Court of the State of Illinois, because the Law of 1891 and Ordinance No. 517 (1) violate the obligations of a contract; (2) take private property without due process of law.

POINTS AND AUTHORITIES.

I.

The Law of 1872 did not warrant a contract by which the rates were to be fixed for thirty years.

Where power is conferred it is not to be construed as authorizing the making of contracts of all descriptions, but only such as are necessary and usual, fit and proper, to enable the corporation to carry into effect the purposes for which it was created.

1 Dillon Mun. Corp., Sec. 443, (4th Ed.)

Any ambiguity or doubt arising out of the terms used by the Legislature in conferring their powers must be resolved in favor of the public. Any fair, reasonable doubt of the existence of the power is resolved against the corporation, and the power is denied.

Seeger vs. Mueller, 133 Ill. 86;
Minturn vs. Larue, 23 How. 435.

It is fundamental that all persons contracting with a municipal corporation must inquire at their peril into the power of the corporation to make the contract.

1 Dillon Mun. Corp. Sec. 447;
Law vs. P., 87 Ill. 385.

No estoppel can ordinarily arise from the act of a municipal corporation done in violation of, or without authority of law. Every person is presumed to know the nature and extent of the powers of municipal officers, and therefore cannot be deemed to have been deceived or misled by acts done without legal authority.

1 Beach Pub. Corp., Sec. 628;
Seeger vs. Mueller, 133 Ill. 86;
Stevens vs. St. Mary's School, 144 Ill. 336.

The city could bind itself only by such contract as it was authorized to make.

Syracuse Water Co. vs. Syracuse, 116 N. Y. 167.

In determining the extent of the power of municipal corporations to make contracts, a careful consideration of the statutes conferring the power is necessary. Where there are express provisions they govern.

1 Dillon Mun. Corp. Sec. 443.

The power claimed to bind the city to a fixed price for thirty years must arise, either from an express grant, or if that does not exist, then such power must be necessary to carry out a power granted. It is not sufficient that such *implied* power is convenient—it should be indispensible.

1 Dillon Mun. Corp. Sec. 89.

Public grants susceptible of two constructions must receive the one most favorable to the public.

Hamilton Gas Lt. Co. vs. Hamilton, 148 U. S. 258.

"The principle is this: That all rights which are asserted against the State must be clearly defined, not raised by inference or presumption, and if the charter is silent about a power, it does not exist."

Black Interpretation of Laws, page 320.

The statutes in question read as follows, omitting words not applicable to this case, viz.:

The Act of April 9, 1872.

That in all cities where water works have been or may

hereafter be constructed by any incorporated company, the city authorities may contract with such incorporated company for a supply of water for public use for a period not exceeding thirty years.

1 Starr & Curtis Stat. page 865, Sec. 450.

The Act of April 10, 1872.

The City Council shall have the power to provide for a supply of water, * * * and to authorize any private corporation to construct and maintain the same at such rates as may be fixed by ordinance, and for a period not exceeding thirty years.

1 Starr & Curtis Stat. page 785, Sec. 175.

The Act of June 6, 1891.

That the corporate authorities of any city in which any corporation has been or hereafter may be authorized by such city to supply water to such cities and the inhabitants thereof, be and are hereby empowered to prescribe by ordinance maximum rates and charges for the supply of water furnished by such corporation to such city and the inhabitants thereof, such rates and charges to be just and reasonable.

And in case the corporate authorities shall fix unjust and unreasonable rates and charges, the same may be reviewed and determined by the Circuit Court of the county in which such city may be

1 Starr & Curtis Stat. page 868, Sec. 458.

The construction of the Supreme Court of Illinois is that neither of these statutes authorized a contract for a price fixed for thirty years.

Danville Water Co. vs. Danville, 178 Ill. 299;
Same vs. Same, 180 Ill. 235;
Rogers Park Water Co. vs. Fergus, 178 Ill. 571.

Authority to contract does not necessarily imply that the price of the supply shall be fixed for the entire period. The supply could be taken for the entire term, the price to be determined from time to time, and the rates to be settled by the rules of the common law.

Carlyle vs. Carlyle Water Co. 52 Ill. App. 577.

As to whether under the *implied* powers a city may make a time contract for thirty years the authorities are somewhat in conflict.

Some of the cases which hold such contracts void are as follows:

A twenty-five-year water contract.

Brenham vs. Water Co. 67 Tex. 542.

A five-year gas contract.

Richmond Gas Co. vs. Middletown, 59 N. Y. 228.

A ten-year gas contract.

Garrison vs. Chicago, 7 Biss. 486.

A thirty-year gas contract.

E. St. Louis vs. Gas Co.. 98 Ill. 415;
Same vs. Same, 19 Ill. App. 44;
Same vs. Same, 47 Ill. App. 411.

A forty-year water contract.

Des Moines vs. Water Co. 95 Iowa, 357.

A thirty-year water contract.

Flynn vs. Little Falls, 74 Minn. 180.

A twenty-year water contract.

Cartersville Water Co. vs. Cartersville, 89 Ga. 683.

A ten-year water contract between the city and a consumer.

Trustees vs. Jacksonville, 61 Ill. App. 199.

An analysis of the cases cited by plaintiff in error will show that a few of them sustain the position that under an *implied* grant such power exists, but an examination of many of them shows that it affirmatively appears that the contract in question was reasonable.

Take for instance the Little Falls case. The court says: It expressly appears by the evidence that the rates are not unreasonable.

Little Falls Co. vs. Little Falls, 102 Fed. 663.

In other cases the conclusion was under a different statute, as for instance in the Arkansas City case, the grant was of *full power and authority to contract for.*

Ill. Trust Co. vs. Arkansas City, 76 Fed. 271.

The Supreme Court of Minnesota have decided a case very similar in facts to the one at bar. It was alleged that the feature of the contract which bound the city to a fixed rate for thirty years was void, and that the number of hydrants taken was in excess of the present need and the rate exhorbitant, which facts were admitted by demurrer. It was held that this conclusion was right.

Flynn vs. Little Falls, 74 Minn. 180.

In the Federal case that came up under the same law, Judge Lochren seems to stand by the State Court, and distinguishes between the two cases by reason of the fact that in the State case the demurrer admitted that the rates were unreasonable, while in the case before him, the evidence showed directly the reverse.

Little Falls Co. vs. Little Falls, 102 Fed. 663.

II.

To construe these Statutes as enacting that the City and Company could together make a contract which would prohibit the State from exercising its power to legislate on the subject of water rates, would violate the State constitution.

The limitation is that no law, "*making any irrevocable grant of special privileges or immunities shall be passed.*"

Sec. 14, Art. 2, Const. Illinois;
I Starr & Curtis Stat. page 113.

The right to legislate on the subject of water rates is primarily in the Legislature.

In enacting such a statute it clearly acts in its sovereign capacity.

This power of regulation is a power of government, continuing in its nature.

R. R. Commission Cases, 116 U. S. 307, page 325.

Whatever law the Legislature enacts is subject to the above limitation.

The Legislature cannot do indirectly what it cannot do directly.

No legislative body can so part with its powers by any proceeding as not to be able to continue the exercise of them. Such a body has no power even by contract to control and embarass its legislative powers and duties.

Cooley's Const. Limitations, page 206.
15 Am. & Eng. Encycl. Law, page 1045;
1 Beach on Pub. Corp. Sec. 554.

On this contention the case of Shields vs. Ohio is directly

in point. The Ohio Constitution contains the same limitation in slightly different language.

The holding of that case is that the Legislature had a right under that constitutional provision to pass a law in 1873 fixing railroad fares at three cents per mile, as against a corporation whose charter gave it the express authority to fix its own rates.

Shields vs. Ohio. 95 U. S. 319.

The debates in the constitutional convention which framed the constitution, show that the framers had in mind the very subject of the regulation of tolls. See particularly the remarks of Mr. Church, on April 30th, 1870, on the amendment offered by Mr. Skinner.

Vol. 2, Debates Const. Conv. 1870, page 1585.

"It is of the highest importance that such control should remain with the State, and it never should be implied that the legislative department intended to surrender it. Such an intention should not be imputed to the legislature if it be possible to avoid doing so by any reasonable interpretation of its statutes. It is as vital that the State should retain its control of tolls upon public highways as it is that it should not surrender or fetter its powers of taxation."

Covington Turnpike Co. vs. Sandford, 164 U. S. 578, page 587.

III.

Sec. 9 of the Corporation Act reserved to the Legislature of the State of Illinois, full power to enact the Act of 1891, as a regulation on the subject of water rates.

"There is a material difference between an artificial cre-

ation and a natural person. The latter can do anything not forbidden by law. The former can do only what is authorized by its charter."

Shields vs. Ohio, 95 U. S. 319, page 323.

The language of the reservation is as follows:

"The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which rules and regulations shall be binding on any and all corporations formed under the provisions of this Act."

1 Starr & Curtis Stat. page 1006, Sec. 9.

Its charter from the State is in the nature of a contract, and is inviolable except so far as power to change is reserved. This is the doctrine of the Dartmouth College case.

Trust. Dart. College vs. Woodward, 4 Wheat. 518.

The business of supplying water is one impressed with public use or interest, and as such the State has a right to regulate and fix the maximum charges.

29 Am. & Eng. Encycl. Law 11.

and authorities there cited;

Spring Valley Water Works vs. Schottler, 110 U. S. 347.

This power of regulation may extend not only to matters connected with the health and convenience of the public, but also to prevent extortion by unreasonable charges.

Georgia Banking Co. vs. Smith, 128 U. S. 174, page 179.

When the Water Company took out its charter under the laws of the State of Illinois, it contracted with the

State that it would submit to have its business regulated by the State.

This provision in the charter qualified the grant, and the subsequent exercise of the power reserved cannot be regarded as within the prohibition of the Constitution.

Penn. College cases, 13 Wall. 190, page 213;
Miller vs. State, 15 Wall. 478, page 495;
Louisville Water Co. vs. Clark, 143 U. S. 1;
N. Y. & N. E. R. R. vs. Bristol, 151 U. S. 556.

The Water Company took its charter subject to such legislation as the State might thereafter enact, and neither the Company nor the City could make a contract which would abridge this power of regulation.

Sioux City Ry. Co. vs. Sioux City, 138 U. S. 98;
Hamilton Gas Light Co. vs. Hamilton, 146 U. S. 258;
Penn. College Cases, 13 Wall. 190, page 218.

The power of both the City and the Company must be held to be subject to the paramount limitation that the Legislature may exercise its right under the reservation of a power over the business of this corporation, at least in so far as such business is impressed with a public interest or use, and may enact new legislation on the subject of the fixing of water rates.

Persons making contracts with the corporation must take notice of the reserved power of the State. Such contracts cannot vary or in any manner modify the relation between the State and the corporation in respect to the right of the State to exercise the reserved power.

Penn. College Cases, 13 Wall. 190, page 218.

Under this reservation the right to regulate tolls by subsequent legislation exists.

Winchester Turnpike Co. vs. Croxton, Ky. 33 L. R. A. 177;
Zanesville vs. Gas Co. 47 Ohio St. 1;
State vs. Gas Co. 34 Ohio St. 572;
Ga. Banking Co. vs. Smith, 128 U. S. 174;
Peik vs. Ry. Co. 94 U. S. 164.

Such charges may be fixed even when the charter gives the corporation the right to fix its fares and charges

Ruggles vs. P. 91 Ill. 256;
Same, 108 U. S. 526;
Ga. Banking Co. vs. Smith, 128 U. S. 174.

It is but reasonable to hold that this corporation in fixing the rates of its toll shall make them reasonable.

Ruggles vs. P. 91 Ill. 256, page 257;
Blake vs. R. R. 19 Minn. 418;
Ruggles vs. P. 108 U. S. 526.

The constitution of the State of Illinois also contains this limitation that no law "making any irrevocable grant of special privileges or immunities shall be passed."

Sec. 14, Art. 2, Const. of Illinois;
1 Starr & Curtis' Stat., page 113.

The constitution of the State of Ohio contains this language: "No special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the General Assembly."

This is held to be a reservation over the rates of a railroad company, formed by the consolidation of two companies, one of which had the express authority to fix its fares; the consolidation act provided that the consolidated

company should have the powers of both the original companies. It was contended that a subsequent law fixing the fares at three cents per mile, violated the charter.

The court hold the contrary, and say: "The Act of 1873, in the particular question, was a legitimate exercise of the reserve power of alteration, and was therefore valid." And further say: "It is urged that the franchise here in question was property held by a vested right, and that its sanctity as such could not be thus invaded. The answer is *consensus facit jus*. It was according to the agreement of the parties. The company took the franchise subject expressly to the power of alteration or repeal by the General Assembly. There is therefore no ground for just complaint against the State."

Shields vs. Ohio, 95 U. S. 319, page 324.

The corporation law of Massachusetts contained this provision: "Provided always that the Legislature may from time to time, upon due notice to any coporation, make further provisions and regulations for the management of the business of the corporation and for the government thereof, or wholly to repeal any act or part thereof, establishing any corporation, as shall be deemed expedient."

Under this reservation this court say that the Legislature of Massachusetts had reserved complete power to pass any law it might seem fit, which might affect the powers of the said corporation.

Beer Co. vs. Mass., 97 U. S. 25, page 32.

In a case where by agreement between the city and a R. R. Co. the latter was to pay three-fifths of the costs of a viaduct, and by a subsequent act of the Legislature it was required to keep the same in repair, entirely at its

own expense, this clause of the Federal Constitution, it was held, could not be successfully invoked.

Chi. R. R. Co. vs. Nebraska, 170 U. S. 57.

In that case the court say: "No doubt the agreement of 1886 constituted a contract in such a sense that the respective parties thereto continue to be bound by its provisions so long as the legislation, by virtue of which it was entered into, remained unchanged. While the agreement lasted, its provisions defined the rights and duties of the city and the railroad companies. But was it a contract whose continuance and operation could not be affected or controlled by subsequent legislation? Usually where a contract, not contrary to public policy, has been entered into between the parties competent to contract, it is not within the power of either party to withdraw from its terms without the consent of the other; and the obligation of such a contract is constitutionally protected from hostile legislation. Where, however, the respective parties are not private persons, dealing with matters and things in which the public has no concern, but are persons or corporations whose rights and powers were created for public purposes, by legislative acts, and where the subject matter is one which affects the safety and welfare of the public, other principles apply. Contracts of the latter description are held to be within the supervising power and control of the legislature when exercised to protect the public safety, health and morals, and that clause of the Federal Constitution cannot in every case be successfully invoked. The presumption is that when such contracts are entered into, it is with the knowledge that parties cannot by making agreements on subjects involving the rights of the public, withdraw such subjects from the police power of the Legislature."

Chi., etc., R. R. vs. Nebraska, 170 U. S. 57, page 71.

It is to be remembered that in this case there was no reserved power of control.

When the control exercised comes strictly within the exercise of the "police power," no reservation is necessary. In such case the corporation may be regulated, without any reservation.

R. R. Co. vs. Jacksonville, 67 Ill. 37.

A case which seems to us directly in point, is that of Spring Valley Water Works vs. Schottler, decided by this court. The law in force at the time of incorporation reposed the authority to fix the water rates in a Board of Commissioners, two to be selected by the Water Company and two by the City, and in case of disagreement, the four should choose a fifth. By subsequent law the authority to fix the rates was reposed entirely in the public authorities. Held that under the reserved power the State had saved its power of control and that the changes in question did not violate the obligations of a contract.

Spring Valley Water Works vs. Schottler, 110 U. S. 347.

The construction of what control was reversed by said Section 9, and what authority the law gave to contract, is to be considered in the light of the following principles, viz.:

Under the common law this corporation was under a duty to furnish water to all who should apply, at reasonable rates, and on equal terms.

Wagner vs. Rock Island, 146 Ill. 139.

It will not be presumed that the Statutes of 1872 intended to release it from that duty.

Ruggles vs. P. 91 Ill. 256;
A. & P. R. R. vs. U. S. 76 Fed. 186.

Public grants susceptible of two constructions must receive the one most favorable to the public.

Hamilton Gas Lt. Co. vs. Hamilton, 148 U. S. 258, page 268.

To effect an exemption from the operation of the Statute of 1891, it must appear that the power to make the contract in question as claimed is so clearly and unmistakably conferred that the language of the grant (that is, the Statutes of 1872) cannot be reasonably construed consistently with the reservation of the power by the State.

Ga. Banking Co. vs. Smith, 128 U. S. 174, page 182.

Grants of immunity from legitimate governmental control are never to be presumed. On the contrary, the presumptions are all the other way.

Ruggles vs. Ill., 108 U. S. 526, page 531.

IV.

Does the Act of 1891 violate any of the terms of the XIVth Amendment.

The fixing of rates which are *prima facie* merely, and not absolute, under a law which does not deny relief in the courts, does not deprive plaintiff of its property without due process of law.

Reagan vs. Loan & Trust Co. 154 U. S. 362;
C. B. & Q. R. R. vs. Jones, 149 Ill. 361.

No complaint is here made as to the manner in which

the rates in question were fixed, and the demurrer admits that they are reasonable and just. If the right to regulate exists, plaintiff's property is not taken.

San Diego Land Co. vs. Natl. City, 174 U. S. 739.

It is not objectionable because by its terms the City Council is to fix the price for the supply to the City itself.

Spring Valley W. W. Co. vs. Schottler, 110 U. S. 347, page 353;

Fallbrook Irrigation Dist. vs. Bradley, 164 U. S. 112, page 169.

What power the courts have to review and make a new schedule of rates, under the latter clause of this Act of 1891, is not necessary to decide.

The remainder of the Act could stand, nevertheless. The errors assigned here do not raise the question, and if they did, the separation between the three departments of government, is a local and not a Federal question.

ARGUMENT.

MAY IT PLEASE THE COURT:

Counsel are not insensible to the great amount of work cast upon a court in reviewing such a case as the one at bar, and very often unnecessarily. We have endeavored in our statement and brief to bring before the court clearly our understanding of the issues involved, and to define them as sharply as possible. In our citation of authorities we have not sought to exhaust all the cases to be found on any one point, nor to present every point that could be suggested, but rather to confine ourselves to the presentation of a few vital points upon which, it seems to us, the merits of this case turn.

We feel that this court, with the briefs of able counsel before it in the case of Rogers Park Water Co. vs. Fergus, and in the case of Freeport Water Co. vs. City of Freeport will have no difficulty in arriving at the correct conclusion as to the full force and scope of the statute in question, known as the Act of 1891. The Rogers Park case involves the question pure and simple of the right to regulate rates to private consumers. The Freeport case, like tho one at bar, involves the question of the right to regulate such rates as between the city and the company, for hydrant rentals.

As shown in our statement of the case, one hundred and fifteen hydrants were rented in this case before the Act of 1891 went into effect, which was July 1st, 1891, and the remaining forty-three were rented thereafter. As to the latter hydrants it seems to us so clear that the Act cannot be held unconstitutional, that we need do no more than

call attention to the fact that these hydrants were rented after the Act went into effect, and hence the obligations of the contracts for their rental are to be measured by that Act itself.

The original ordinance professes to fix a price for future hydrants, but does not obligate the city to take any more than one hundred. Each time a subsequent hydrant was taken, an ordinance was passed specifying its location, fixing the price, the term, and containing an agreement on the part of the city to pay.

The controversy is over the one hundred and fifteen rented before the Act of 1891 was passed, and as to the effect of this Act upon the prior ordinances.

This Act is a complete justification for the ordinance known as No. 517, and unless the Act falls, the ordinance must stand.

The contention of the other side is that the ordinances passed prior to the time this Act took effect, fixed rates unalterable for thirty years. This position necessarily assumes two premises, viz: 1st, that the proper construction of the language of the two Acts of 1872 is, that they professed to give authority to bind the city in that regard. 2nd, that by such statutes the Legislature lawfully delegated to the city such power to contract, that the State was unable thereafter to exercise its legislative power to enact this statute so as to apply to this case.

In our brief it seemed most logical to divide the authorities under several heads or groups, and in this argument it is probably best to pursue the same line of division.

I.

The law of 1872 did not warrant a contract fixing a price for thirty years.

The two Statutes of April 9th and 10th, 1872, are to be construed in *pari materia*. Counsel for the other side substantially so admit.

The first Statute is entirely silent on the subject of rates. When adopted it was entirely inapplicable to *persons*. The word *persons* first appeared by amendment in 1885. The second Statute is also lacking in express power to fix rates for the full term of thirty years.

The grammatical construction of the last phrase "*and for a period not exceeding thirty years*," is, as our court holds, that said phrase modifies the words *construct and maintain*, and not the words *at such rates as may be fixed by ordinance*.

This construction is practically admitted by the other side when they contend that express power is given to provide the supply, and this *implies* the power to contract for a long term as a necessary incident.

The cases, it must be admitted, are not harmonious on the question of whether a city can make a contract for thirty years, in the absence of direct authority expressly stated. In other words, whether the element of time, if the price is fixed for thirty years, does not make the contract unreasonable. The statutes of the different States vary so much in phraseology that the weight of any case as authority in the case at bar is sometimes hard to determine.

The cases are by no means all one way that such contracts are good.

We cite considerable respectable authority to the con-

trary, and as we confidently believe when those cases cited on the other side which are inapplicable, and those which are based on statutes so different from ours as to be of no controlling weight, and those which are based on reasons not found here, are winnowed out, our court will not be convicted of following the wrong lead. We cannot call attention to every case cited on the other side. As already said there are a few cases where the holding is that where a power to contract is given, silent on the point of time, that a long time contract, as for instance in Indiana, a gas contract for twenty years, is upheld. The principal reason given in those cases is that no company would consent to build a plant unless a contract for such a length of time were given. That reason would not be of controlling effect in the case at bar, for under our construction of the law, the city became bound to take the supply for thirty years, at such prices as should always be a reasonable compensation for the service rendered. As an inducement to the building of the plant, the company had the assurance that it should furnish a certain supply at reasonable prices. That is a greater assurance than a railroad or a street car line have, when they incorporate or take a grant from a city. The same reason which holds that a water company would not invest its money except upon an assurance of a definite price for its service, would hold that a railroad company would not incorporate and build its line unless there was a guaranty that its franchise should be exclusive, or that its fares should never be reduced below a certain rate. Railroad companies, street car companies, telephone and other companies whose business is impressed with a public interest, and as such is subject to regulation on the subject of rates, do not demand and do not receive such assurances, as water companies say they must have.

Again, the cases that so hold are at variance with the rules of construction applicable to such grants, viz., that every reasonable doubt of the existence of the power should be determined in favor of the public.

The public policy of the State of Illinois is clearly indicated by the East St. Louis gas litigation.

The Supreme Court, while holding the city liable on the ground, among others, that so far as the contract was executed and the city had received the gas under it without objection and without notice that it would no longer be be bound to the contract, very clearly held that so far as it was executory it was objectionable on account of the length of time for which it ran, viz., thirty years. (98 Ill. 415, East St. Louis vs. Gas Co.) The city thereupon gave notice of its intention to terminate the contract. The company brought suit and was defeated.

19 Ill. App. 44, and 47 Ill. App. 411.) (same parties

These decisions made in another case than the one at bar, as well as others made in cases of a school teacher, and keeper of a poor farm indicate that in Illinois, whatever the rule may be elsewhere, municipal corporations are held to a strict limit of the powers conferred.

It will be noticed that the decision in the 98th Ill. 415, was filed Feb. 3, 1881, more than a year prior to the passage of the first ordinance in this case.

Another fact that is noteworthy as to their cases is that in nearly every one of them the contract is adjudged to be just and reasonable. In some of the cases at least, evidence was heard from which the question of reasonableness was determined. In that respect they differ from the the case at bar, where it is confessed that the rate was originally too high, and even then exceeded a just compen-

sation for the service rendered. The admission of this fact by the demurrer is not inadvertant. Our State Supreme Court held the pleas good, and sent the case back to the trial court, where an ample opportunity was afforded to traverse the pleas, if untrue. But plaintiff declined that issue.

We submit that no case can be found in the books anywhere which bound the city under an implied power, to a contract for thirty years, confessed to be unreasonable in the prices fixed.

The reasons assigned by our Supreme Court for holding that the proper construction of the language of these two acts did not warrant a contract for a fixed price for thirty years, simply considering them as standing by themselves, and unaffected by the limitations of the constitution and the corporation act, need not be set forth here at large. The opinion speaks for itself.

These limitations will be discussed under the next two heads.

II.

To construe these Statutes of 1872 as authorizing a contract for a fixed rate for thirty years, which would prevent the passage of the Act of 1891, as to the case at bar, would violate the State Constitution.

The authorities are somewhat in conflict on the point as to whether, in passing such ordinances as are set out in the declaration, the City acts in a legislative capacity, or in an individual business capacity, but however that may be, the logical sequence in the case at bar is this:

If the position of plaintiff in error is true, then the City

of Danville has by its contract limited the legislative power of the State—a thing which the State Legislature itself could not do.

Let us state the following propositions:

A. In the first instance the Legislature has the right to regulate water rates, and this right is governmental or legislative in its nature.

B. It may confer that power on the City.

C. Or it may confer power on water companies to fix their own rates.

D. But the Legislature in all its acts is ever subject to the constitutional limitation, that no law "*making any irrevocable grant of special privileges or immunities shall ever be passed.*"

Sec. 14, Art. 2, Const. Illinois.

The law places a duty upon every person or corporation engaged in the business, to furnish water at reasonable rates, and authorizes the Legislature to pass laws to enforce that duty.

Under the construction of plaintiff in error, it is removed or excused from this duty, and from the power of the Legislature to coerce the performance of that duty. An unreasonable rate has been originally fixed, and it claims immunity by reason of an alleged contract with the city.

Under the constitution of the State of Illinois, no such immunity is possible. No contract can be made which deprives the State of its powers in the premises, to legislate, as may be needed, on the subject of water rates.

The power of the State over water companies is not absolute, but it does extend under the constitution and under the reserved power of Sec. 9 of the Corporation Act,

to the passage of any law on the subject of water rates, the purpose of which is to prevent extortion.

Suppose for the sake of argument that on Nov. 11th, 1882. (the date of the first ordinance.) the Legislature had passed a law to the effect that all water companies in the State should have and receive $75 per annum as a rental for all hydrants furnished to cities, for a period of thirty years thereafter.

And suppose for the sake of argument that relying on the improbability or impossibility of a change in such legislation the Danville Water Company had built its works and put in one hundred hydrants for the City of Danville.

And suppose further for the sake of the argument that afterwards on June 6th. 1891, the State Legislature had enacted that all persons or corporations furnishing water should do so at rates to be fixed by the municipal authorities in the city in which such water works were located, such rates to be just and reasonable.

Could it be contended for a moment that the Legislature was powerless to adopt the second law by reason of the former law?

No distinction can be made on account of the fact that in this case the rates were fixed by the ordinances of the city accepted by the company instead of by an Act of the Legislature. That fact does not change the effect of the legal principles announced in the cases we have cited. In view of the constitutional limitation the city could exercise no higher power than the Legislature. The legislative power of the State could not be bartered away by anyone.

Neither can any distinction be made by virtue of the

fact that in said cases the right granted was to the company to fix its own fares. That right is as valuable as the right to receive a certain fixed amount. If the obligation of contract rights is found to exist, such contracts cannot be varied in the slightest degree without the consent of both parties.

The authorities are also in conflict as to whether or not the Legislature when it passes a law regulating tolls in cases of those engaged in a public business, has authority in the premises by virtue of the "police power." It must be confessed, we think, that the decisions of this court are not altogether harmonious. But it is needless to stop to discuss the limits of the "*police power.*"

We have not taken the time to cite the cases which hold that this right to regulate tolls is by virtue of the "*police power.*" It is sufficient for the purposes of this case to know that such power to regulate exists, by whatever name it may be called. The doctrine is now too well settled to admit of dispute, that such a power of control lies in the State, and that the doctrine applies to the rates of a water company. The doctrine is also well settled that such power is legislative in its nature, and that the seat of such authority to so regulate the business, is primarily in the Legislature of the State.

As already stated, in the State of Illinois the Legislature is subjected to a limitation which prevents it from parting with its control over water rates.

The common law abridges the right of any individual or corporation engaging in a quasi-public business, to fix its tolls according to his own will. The right to carry on the business of supplying water to a city or its inhabitants

does not exist by common right. It is a matter of grant or privilege from the public or from the government. The person who takes such a grant or privilege, does so with the duty attached that he must serve all who apply, on equal terms and at reasonable rates, and that the law-making power may pass Statutes regulating tolls. This court has held, notably in the two cases of New Orleans Water Co. vs. Rivers, 115 U. S. 674, and St. Tammany vs. New Orleans Water Co., 120 U. S. 64, that the Legislature, *in the absence of constitutional limitations*, may grant an exclusive privilege, which will pass beyond its power to repeal or modify. But these holdings are expressly limited to those cases where the Legislature itself is unhampered.

In the State of Illinois, improvident grants, especially to corporations, had been made by the Legislature, to railroad and other companies, by which it seemed that the power to regulate the tolls of such grantees had been lost to the State. Accordingly, when the new Constitution was framed in 1870, a safeguard was inserted which was intended to be a check on that point, upon the power of the Legislature. That such was its purpose is plain from its provisions as well as from a reading of the debates upon the adoption of the section in the convention, and also from a knowledge of the history of the State and its laws.

To now hold that the city under a power from the Legislature could estop the State from legislating on the subject, would violate the limitation placed on the Legislature itself by the constitution. It is self-evident that the limitation on the Legislature is binding upon its creature, the City.

Would it be contended that under the constitution of

1870, the Legislature of Illinois might enact that all railroad companies hereafter formed may collect toll for carriage of passengers at the rate of three cents per mile, which rate shall never be reduced during the life time of the franchise of the grantee, or even say, not within thirty years? And that such legislation would stand as against a subsequent Act of the Legislature authorizing such rates to be fixed by a Railroad Commission?

The same inhibition applies to water rates as to railroad fares.

This power of the State cannot under our constitution be lost.

The Legislature of the State of Illinois could not give plaintiff a charter which would exempt it from future legislation on the subject of water rates. How then can it give the city and company power to so contract as to accomplish that purpose?

The case of Shields vs. Ohio is in point. In its facts it is as follows: Two railroad companies, one of which under its charter possessed the express power to fix its own fares, were consolidated on June 15th, 1853, by virtue of a General Act passed March 3d, 1851, which declared that such consolidated company should have all the powers conferred upon the original companies. The new constitution of Ohio took effect Sept. 1st, 1851. It declared that "*no special privileges shall ever be granted that may not be altered, revoked or repealed by the General Assembly.*" It also contained a clause giving the Legislature the right to alter or repeal all laws governing corporations.

The court in its opinion quote the language we have above quoted, and say that this limitation reserved to

the State the right to fix the fares at three cents per mile, by the Act of 1873.

Shields vs. Ohio, 95 U. S. 319

The authority and soundness of doctrine of this case has never been doubted by the court.

The power conferred by the Statutes of 1872 must be determined in the light of the authorities, that a grant which will impair the legislative power of the State, is never presumed. Such a grant must appear from language which is clear and unequivocal. And of course such grant cannot exist counter to a limitation on the Legislature.

Kindred to this question, is the one we discuss under the next sub-head, viz: As to the reserve power over this plaintiff and all other similar corporations under Sec. 9 of the Corporation Act.

The control reserved by the constitution is over persons and corporations, while that of Sec. 9 is only over the business of the latter.

III.

Under Sec. 9 of the Corporation Act, the State reserved the right to pass such provisions and regulations as are contained in the Act of 1891.

The exact language of this reservation is: "The General Assembly shall at all times have power to prescribe such regulations and provisions as it may deem advisable, which regulations shall be binding on any and all corporations formed under the provisions of this Act." (1 Starr & Curtis Stat. page 1006.)

The effect of such a reservation is that the plaintiff when it took its charter under the laws of the State, contracted with the State that the State should have power

to prescribe such regulations and provisions as it, the State, might deem advisable. Having contracted to that effect it cannot be heard to say that a subsequent law exercising the reserved power, violates the obligation of the contract, for exactly the reverse is true. The legislation is in accordance with the contract.

The power to regulate is not a power to destroy, and in the case at bar it has not been attempted either by the Act of 1891, or Ordinance No. 517, to so exercise it.

If this power to regulate tolls is not reserved by this provision, pray tell, what is reserved?

A reservation is not necessary to enable the State to pass subsequent laws under the "*police power*" strictly speaking. For instance, in two of the cases we cite from this court, it is held that the amount of street paving which can be required of a street car company can be increased. And that a R. R. Co. which by agreement with the city built a viaduct, three-fifths of the cost of building and repairing which it was to bear, and no more, cannot insist on the contract as against subsequent legislation imposing on it the burden of the whole cost of maintaining and repairing. These burdens the law imposes under the "*police power*" and independent of the "*reserved power.*"

The right to regulate charges is close kin, at least, to this branch of the "*police power.*"

It is a right of great importance to the public, and any claim to exemption or immunity from legislative control over the tolls of such a corporation, should never be implied, as Judge Harlan says, in delivering the opinion in Covington, etc., Turnpike Co. vs. Sandford, 164 U. S. 578, page 587: "It is as vital that the State should retain its control of tolls upon public highways as it is that it should not surrender or fetter its power of taxation."

No more important regulation could be thought of, as necessary for the State to reserve, than the right to supervise the charges of such a corporation as this. The provision for a water supply and the prevention of extortionate charges for the water supplied is a matter of great public concern. If a city may bind itself to pay extortionate prices, it may soon disable itself, in view of the well known limitations upon the debt creating power of cities in our State, from performing its necessary functions. The matter of an adequate supply of fire hydrants is a necessity for the protection of the public against the calamities of fire.

The same construction which the plaintiff in this case puts upon its alleged contracts under the laws of 1872, would prevent the Legislature from enacting the Law of 1891, as governing rates for water furnished to private consumers. That is the question involved in the Rogers Park case. Their construction is that the Act of April 10th, 1872, authorized all rates to be fixed for thirty years, unalterably. The Statute seems to make no distinction between public and private rates.

A case directly in point on this branch of the case is Spring Valley Water Works vs. Schottler, 110 U. S. 347. This case was of controlling weight in the decision of our Supreme Court, and as we view it, must also be, in this court. The Constitution of California delares that the use of water appropriated for sale, rental or distribution, is a public use, and subject to regulation and control by the State, and also provides that the rates in cities should be fixed annually by the city council.

The constitution took effect January 1st, 1880. The Spring Valley Water Works Company was incorporated June 19th, 1858, under a law which designated that water

rates should be fixed by a commission, two selected by the company, two by the city, and in case of disagreement the four to choose a fifth. At that time there existed a reserve power to alter or repeal all laws passed as to corporations.

It was held that the provisions of the constitution of 1879, did not violate the obligations of a contract, and that the provision for the fixing of rates was indissolubly connected with the reserved power.

Spring Valley Water Works vs. Schottler, 110 U. S. 347.

The provisions of Sec. 14, Art. 2, Constitution of Illinois, and Sec. 9 of the Corporation Act, warrant a change of rates under the reserved power of regulation, and that being true no distinction can be made between the case cited and the one at bar.

We have found no case in the books anywhere authorizing such a contract as the plaintiff claims, where a reserve power over corporations was kept by the State, and where the Legislature was forbidden to give irrevocable special privileges or immunities.

IV.

Do Ordinance No. 517, and the Statute of 1891, violate the terms of the XIVth Amendment?

It seems to us this point is not fairly within the issues. The only property which plaintiff could claim to have lost by virtue of the ordinance in question, would be the benefits of its alleged contracts. The prohibition of Section 10 of Article 1, of the Federal Constitution, reaches that point directly. If the obligation of the contract is impaired, that is the end of the whole matter. In such case there

is no need to seek for an indirect prohibition. If the obligation of the contract is not impaired, for the reason that its obligation was not so broad as claimed, then we fail to see how the XIVth Amendment can save it.

The effect of this Act of 1891, was to vest in the City Council a legislative power to regulate water rates, which in the absence of a contract prohibiting it, was clearly proper. The City Council was certainly a proper tribunal in which to repose the power.

No attack is made on the manner in which the City Council in this case exercised its power. It is not claimed that the Council acted improperly or corruptly. It was not for this Act to point out the proceedure to govern the Council in its determination of what rates were reasonable. The Council was a legislative body, and was not bound to proceed to a hearing as in cases in court.

The attack is directed solely against the power of the city to pass the ordinance. We think no other question arises on this record, and the only reason that can be alleged against the right to pass the ordinance is a pre-existing contract, the obligations of which it is alleged to impair.

The power of review sought to be given by this statute to the courts, to the extent of enabling such courts to modify and establish a new schedule of rates, in case the city shall fix the same too low, received no attention in the court below. If the provision in question is unconstitutional as attempting to confer legislative powers on a court, that question arises solely under the State Constitution, which divides all governmental power into the three distinct branches. In that respect it is not in violation of the Federal Constitution, and the State Court will no

doubt solve that question correctly when it is presented to them.

The effect of the statute is merely to make the action of the council in establishing rates *prima facie* evidence of the justness thereof. This is similar in effect to the establishment of rates by a Railroad or Warehouse Commission, and as we understand the holdings of this court, that clearly is unobjectionable.

V.

Under the four sub-heads above we have sought to discuss what seemed to us the leading issues of law in the case. Now with a few remarks of a more general nature we submit the case.

The construction put by our court upon the Acts of 1872, would undoubtedly sustain Ordinance No. 517, without any reference to the Act of 1891. The construction is that the former Acts did not contemplate the fixing of rates for the full term in advance, but that the regulation should be by ordinances passed from time to time. In this view, the validity of Ordinance No. 517 does not depend solely upon the Statute of 1891, for the ordinance might have been passed without regard to the new Statute.

In that view no Federal question would have been involved, and we might have asked this court to affirm because no jurisdiction appears here. It is, however, true that the State Court did hold directly that the Act of 1891 was constitutional and valid, and we have preferred to meet the question squarely upon its merits. If this court should conclude it had no jurisdiction it could of course dismiss the suit of its own motion. But we believe the merits to be with the defendant in error, and desire a decision thereon.

If it were not for the fact that the Statute of 1891 is drawn in question, the construction of the Supreme Court of the State on the meaning of the Acts of 1872 would be conclusive, and no Federal question would be involved.

The construction put by the State court upon this Statute of 1872 is in harmony with the prior construction put upon similar contracts, especially the East St. Louis gas contract, and is in harmony with the general policy that all such grants shall be strictly construed. In some States the construction placed by the decisions upon such contracts, is more liberal. Whenever a question arises for the first time in any State, its courts must determine in case of a conflict of authorities which line they will follow. Such decisions become a part of the public policy of the State. And while we do not deny the proposition that when a case comes before this court involving a question as to the impairment of the obligations of a contract, this court has the right to construe the contract for itself, yet in doing so the court ought not to coerce a State to accept a line of decisions, which seem to the courts of that State contrary to its public policy.

This is not a case where the decisions of a State court have once established the construction of a Statute, and contract rights have vested in consequence, and where afterwards the courts have reversed their former decisions. In the case at bar the construction of the Statutes of 1872 came before the Supreme Court of the State of Illinois, for the first time. They had not been drawn in question in any decision before then, except in the Carlyle case, 52 Ill. App. 577.

But the validity of a thirty year contract for gas had been drawn in question and held adversely.

The minority opinion in the State Court recognize this

as the law in case of a gas contract. The main difference between the majority and minority was as to the degree of strictness to be applied in construing these two acts.

Judge Dillon, speaking of this rule of a strict construction of the powers of municipal corporations, says: "The history of the workings of municipal bodies has demonstrated the salutary nature of this principle, and that it is the part of true wisdom to keep the corporate wings clipped down to the lawful standard." 1 Dillon Mun. Corp. Sec. 457.

The construction which the State Supreme Court has put upon the law of the State of Illinois is an eminently just one to the people. The Water Company is not denied a just and full compensation for its service. What that compensation shall include has been settled in similar cases by this court, notably the case of Smyth vs. Ames, 169 U. S. 466.

On the other hand, the Water Company is entitled to its franchises and privileges, including the right to carry on its business, use the public streets to lay its pipes, to furnish to the city the supply of water to the hydrants called for by the respective ordinances, and to receive and collect therefore tolls and rates which shall always be just and fair and reasonable.

It may be that the contract was not as advantageous to the company as it thought when it accepted the same.

As this court says: "Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by State and National legislation."

Hamilton Gas Light Co. vs. Hamilton, 146 U. S. 258, page 268.

We confidently believe that the decision below was strictly in accordance with the laws of the State of Illinois, and that such decision and such laws as were given effect thereby, do not violate any of the provisions of the Federal Constitution, or the XIVth Amendment.

We therefore ask an affirmance.

Respectfully submitted,

G. F. Rearick.

Attorneys for Defendant in Error.

Supreme Court of the United States.

No. 373.—October Term, 1900.

The Danville Water Company, Plaintiff in Error, vs. The City of Danville. | In error to the Supreme Court of the State of Illinois.

[March 25, 1901.]

Mr. Justice McKenna delivered the opinion of the Court.

The parties to this action were respectively plaintiff and defendant in the courts of the State, and we will so denominate them. The plaintiff is a private corporation, and the defendant is a municipal corporation organized and existing under the general laws of the State. The action was brought by the plaintiff to recover the sum of $5,000, alleged to be due for the rental of certain fire hydrants.

The cause of action relied on is based on an ordinance passed on the 9th of November, 1882, by the defendant, granting the plaintiff the privilege of constructing and maintaining water works for supplying the city of Danville, Ill., with water. The ordinance provided in detail for the character of the works and the supply, the rates to consumers, whether furnished by meter or otherwise, and the purchase by defendant of the works at the expiration of five, ten and twenty years, and at the expiration of thirty years of any renewed term.

Section 8 and section 14 are respectively as follows:

"In consideration of the benefits which will be derived by the said city and its inhabitants from the construction and operation of the said waterworks, and in further consideration of the water supply hereby secured for public uses, and as the inducement to said water company to accept the provisions of this ordinance and contract, and to enter upon the construction of said waterworks, the rights and privileges hereby granted to and vested in said water company shall remain in force and effect for thirty years from the passage of this ordinance; and for the same consideration and as the same inducement, the city of Danville hereby rents of the Danville Water Company, for the uses hereinafter stated, one hundred fire hydrants of the character hereinafter described, and for and during the term of thirty years from passage of this ordinance, and agrees to locate them promptly along the line of the street mains, on demand of said water company, and on submission by it to said city of a plan of the location of said street mains, and agrees to use the said hydrants carefully and to pay said water company for any injury which may happen to any of them when used by any officer, servant or member

of the fire department of said city, and agrees to pay rent for said one hundred hydrants at the rate of seventy-five dollars each per year, and agrees to pay during the unexpired term of said ordinance and privilege, for any additional fire hydrants which city may hereafter locate at the rate of sixty-two and fifty one-hundreths dollars each, per year, for the next forty additional hydrants, and for all fire hydrants in excess of one hundred and forty at the rate of fifty dollars each, per year; all of which sum shall be paid by said city to said water company, beginning from the dates when each of such hydrants shall be put into successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and terminating upon the expiration of said term of thirty years, or upon the purchase of said works and their privileges and property by the said city.

"This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of the terms, obligations and conditions of this ordinance, and upon such acceptance this ordinance shall constitute the contract, and shall be the measure of the rights and liabilities of the said city and the said water company."

The acceptance was duly filed by plaintiff. On the first of May, 1883, another ordinance was passed amending the first ordinance, for the construction of the works, the streets where the mains should be laid, and the place where the fire hydrants should be put, and how constructed.

Section 2 provided as follows:

"This ordinance shall become binding as a part of the contract existing between the city of Danville and the Danville Water Company in the event that said water company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of it."

Between the 8th of June, 1883, and the 18th of October, 1894, twelve other ordinances were passed, requiring the extension of the mains of the water system to other streets and the erection of fifty-seven additional fire hydrants; all of the ordinances were declared binding as contracts upon acceptance by the plaintiff, and all were accepted. The rental of the hydrants was fixed, as to some of them, at $62.50 per annum, and others at $50 and $40 per annum. In the ordinance fixing the latter sums it was provided that nothing therein should "operate to affect in any way any of the provisions of the ordinance heretofore passed by said city relative to the Danville Water Company except to the extent of the reduction of the rental of the additional hydrants therein provided and hydrants thereafter to be provided."

There was an allegation that plaintiff did all things required of it in the construction of the system, and put in all mains and hydrants and kept them supplied with water.

The pleas of the defendant admitted that the sum of $1,930 was due, but denied liability for anything over that sum, because the rental for the

hydrants had been reduced by an ordinance passed by the city January 17, 1895, which was entitled "An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company of the city of Danville." The ordinance recited that after a careful comparison of water rates and charges in other cities it was found that those of the Danville company were "unjust, excessive and unreasonable." And that whereas under the act of the State approved June 6, 1891, in force July 1, 1891, and under "other fully competent and complete legal authority," the city was empowered to prescribe the ordinance maximum rates for water furnished by the Danville company; and whereas, after full investigation the members of the council believed the rates prescribed were just and reasonable, a schedule or scale of rates was ordained to take effect on the first of May, 1895. The rental of fire hydrants was reduced for the first one hundred and forty to a uniform rate of $50 per annum; for all others then rented and others which should be rented, $40 per annum. For certain uses of water which had been theretofore furnished free by the plaintiff a rate was fixed, to be paid by the city. Provision was made for the appearance by the city attorney if the plaintiff should desire to apply to the circuit court of the county for a review of the rates.

There was an allegation of notice of the passage of the ordinance to the plaintiff, and the prior ordinances under which plaintiff claimed an irrevocable contract were at the time of the passage of said ordinances in excess of a reasonable compensation for the water supplied, and were at the time of suit "unjust, unreasonable and excessive."

The plaintiff demurred to each of the defendant's pleas, and the demurrer was sustained. The defendant asked that the demurrer be carried back to the declaration, and elected to stand by its pleas. Judgment was entered for the plaintiff in the sum of $2,701, motion to arrest, which was denied, and the case was then taken to the Supreme Court of the State, by which court the judgment was reversed, and the cause was remanded for further proceedings in accordance with the views expressed in the opinion filed in the cause.

On the return of the case to the circuit court the defendant by leave of the court filed additional pleas, to which a demurrer was sustained. With this action of the court we have no concern.

In accordance with the opinion of the Supreme Court of the State the demurrer of the plaintiff was overruled as to the first and second pleas of the defendant, and sustained as to the third. The plaintiff elected to stand by its demurrer, and judgment was entered for the sum of $1,930 and costs of all suit. On appeal to the Supreme Court it was sustained, the court expressing the following opinion:

"This case has practically been before us on two former occasions, the parties then being reversed.

"Counsel for appellant concedes the judgment from which this appeal is taken is in exact conformity with the judgments and opinions in the former cases, and that no new question or matter has intervened since the former hearings here. Manifestly the only purpose of this appeal is to obtain a final judgment in this court to enable appellant to take a further appeal, if it should desire to do so.

"Adhering as we do to the reasoning and conclusions announced in *Danville Water Co.* v. *The City of Danville*, (78 Ill. 229,) and *Same* v. *Same*, (180 Ill. 235,) on the authority of these cases this judgment will be affirmed."

The chief justice of the State allowed this writ of error.

The questions presented by this record are the same passed on in *Freeport Water Co.* v. *The City of Freeport*, and depend upon the same statutes. Upon the authority of that case the judgment of the Supreme Court of Illinois is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 373.—October Term, 1900.

The Danville Water Company, Plaintiff in Error, vs. The City of Danville. } In error to the Supreme Court of the State of Illinois.

[March 25, 1901.]

Mr. Justice White, with whom concurs Mr. Justice Brewer, Mr. Justice Brown and Mr. Justice Peckham, dissenting.

It will be seen from the opinion of the court that this case differs in no material particular from that of the *Freeport Water Company* v. *The City of Freeport*, just decided. Under the sanction of the same statutes considered in the F[illegible] case, the defendant in error, the City of Danville, contracted with the plaintiff in error, the Water Company, for the period authorized by the statute, and stipulated as to the rates to be paid for a public water supply. These rates were adhered to until, under the authority of the statute of the State of Illinois passed in 1891, referred to in the opinion in the Freeport case, the defendant in error reduced the rates below the contract price. It now asserts in this record that it possessed the power to do so.

For the reasons stated by me for dissenting from the opinion and decree in the Freeport case, I dissent from the opinion and decree in the present case.

True copy.

Test:

Clerk Supreme Court, U. S.